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ROYAL COMMISSION ON TRANSPORTATION

OTTAWA, ONTARIO
MONDAY
MAY 29th, 1950.

THE HONOURABLE W.F.A. TURGEON, K.C., LL.D. - CHAIRMAN

HAROLD ADAMS INNIS - COMMISSIONER

HENRY FORBES ANGUS - COMMISSIONER

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G.R. Hunter
Secretary

- - - - - -

COUNSEL APPEARING:-

F.M. Covert, K.C. G.C. Desmarais, K.C.	Royal Commission on Transportation
H.E. O'Donnell, K.C. H.C. Friel, K.C. N.J. MacMillan	Canadian National Railways
F.C.S. Evans, K.C. I.D. Sinclair	Canadian Pacific Railway
J.J. Frawley, K.C.	Province of Alberta
M.A. MacPherson, K.C. F.C. Cronkite, K.C.	Province of Saskatchewan
J. Paul Barry	Province of New Brunswick
C.D. Shepard	Province of Manitoba

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Ottawa, Ontario,

Monday, May 29, 1950

MORNING SESSION

ARGUMENT BY MR. FRIEL (Cont'd)

THE CHAIRMAN: Very well, Mr. Friel.

MR. FRIEL: I have two more topics, my lord, and I will not be long. May it please the Commission the first heading is Grade Separation and Protection at Level Crossings. This matter is dealt with in our main submission at pages 161 to 170. There we have referred to the intolerable burden imposed on railways by mandatorycontributions towards the cost of installation, operation and maintenance of grade separation projects and protection at highway crossings generally.

THE CHAIRMAN: What is the section of the Act?

MR. FRIEL: Sections 257 to 264. We would amend four sections, my lord. I have some spare copies of our proposed amendments here.

THE CHAIRMAN: We have not seen them yet?

MR. FRIEL: They were filed at the usual time.

THE CHAIRMAN: Oh, yes, we have them. You have a new section 259?

MR. FRIEL: That is right. The Canadian Pacific amendment to section 259 would empower the Board to order contribution by the crown. Our proposed amendment to section 259 does the same thing by subsection (1) of our amendment. We go further, however, and would limit the portion of cost to be paid by the railways under section 262 to 50 per cent of the difference between the total cost of such work and the contribution from the grade crossing fund, or to the capitalized value of the benefits accruing to the railway from such

work, whichever is the lesser. We do that with subsection (2) of our proposed section 259. The first part of our amendment to that section is exactly the same as the Canadian Pacific.

THE CHAIRMAN: You mean subsection (1) is exactly the same?

MR. FRIEL: Yes.

THE CHAIRMAN: And subsection (2) is yours?

MR. FRIEL: That is our own. That is new. We recommend, as does the Canadian Pacific --

THE CHAIRMAN: Just a minute. You would limit the cost to the railway?

MR. FRIEL: Yes, to 50 per cent.

THE CHAIRMAN. Fifty per cent of the difference between the total cost of such work and the amount applied thereto by the Board under the said section.

MR. FRIEL: Or to the capitalized benefit accruing to the railway, whichever is the lesser.

THE CHAIRMAN: Have you any particular reasons to urge in favour of that change?

MR. FRIEL: It is a limitation to reduce what I have called the intolerable burden on the railways. There is good justification --

THE CHAIRMAN: What is the burden today?

MR. FRIEL: The burden, my lord, is that we pay whatever amount the Board may set, and it may be half the difference --

THE CHAIRMAN: In practice what is going on today? What is the Board doing?

MR. FRIEL: In practice we are usually stuck with half of the cost. If it were a provincial highway we might be stuck with the whole thing if the province saw fit not to contribute even though ordered to do so.

THE CHAIRMAN: Oh, yes, the Board is not empowered to make any order against the crown.

MR. FRIEL: No, but it would be under our proposed amendment.

THE CHAIRMAN: The proposed amendment to subsection 1 would bring that about for you.

MR. FRIEL: That is right.

THE CHAIRMAN: Then that would give the Board a power which it does not possess today.

MR. FRIEL: And it would also limit --

THE CHAIRMAN: Then you still think the Board ought to be limited?

MR. FRIEL: Yes, we think it should have no discretion to award over fifty per cent against the railway or the capitalized benefits, whichever is the lesser. We recommend, as does the Canadian Pacific, that section 260 be repealed. This would do away with the inquiry by the Board as to when the railway was constructed. At present if the railway was constructed before May 19, 1909, the Board may apportion the cost. If constructed afterwards the railway must, for all practical purposes, bear the whole cost. In view of the very material change in highway traffic conditions since this section was first put in the Act, and the greatly increased need for protection at crossings, there seems to be little justification for treating crossings that were in existence in 1909 any differently than ones which came into existence afterwards. We are in common with the Canadian Pacific on that recommendation, my lord.

THE CHAIRMAN: I suppose the difficulty with this sort of proposal is that it would be hard for us to hear the other side to it.

MR. FRIEL: Well, that is so, my lord. Of course the other side could be here to present their point of view if they cared to. Both railways propose amendments to Section 262 which is the section dealing with the grade crossing fund.

THE CHAIRMAN: Are the amendments the same or different?

MR. FRIEL: They are somewhat different. The Canadian National amendment would authorize the Board to apply up to 75 per cent of the cost of construction without any maximum in dollars. The Canadian Pacific proposal is the same except that the percentage they propose is 70 per cent. In addition, the Canadian National would add to the construction cost. As it is now the Board only awards the actual cost of construction or contribution towards that. We would add the cost of installing, maintaining and operating, which theBoard has repeatedly held could not be done under the present section. Why these other costs should be excluded from the fund is not apparent, and it is submitted their exclusion is not justifiable. Our amendment to 262(5) is to have it conform with the other proposed amendments. There are certain incidental changes which are required by virtue of the other amendments.

We would amend 262(6) to increase the amount to be appropriated to $1 million and to make the section conform with the other proposed amendments. My friend Mr. Spence has explained that a bill has already been introduced in Parliament increasing the amount to be appropriated to $1 million, and also increasing the dollar maximum from $100,000 to $150,000. A recommendation for an increase in the appropriation will probably be unnecessary. We would still ask, however,

that the dollar maximum be removed. The Canadian National is alone in proposing an amendment to section 264. The Board holds that where changed traffic conditions on the highway necessitate a wider, stronger or more modern bridge or subway, an order may issue under section 262 requiring reconstruction despite the fact that the present bridge or subway may be safe and good for many years. In such a case no grant can be made from the fund. Our amendment would preclude the Board from issuing such an order.

(Page 24218 follows)

THE CHAIRMAN: That is Section 264, is it?

MR. FRIEL: Yes, my lord. We just delete the words I mentioned. The Section now reads:-

"Every structure by which any railway is carried over or under any highway or by which any highway is carried over or under any railway, shall be so constructed and, at all times, be so maintained....."

We would delete those words.

THE CHAIRMAN: Which words? The words, "at all times, be so maintained"?

MR. FRIEL: Yes, my lord. The burden would be to construct it safely having regard to conditions.

THE CHAIRMAN: I beg your pardon?

MR. FRIEL: The burden would be to construct it safely to meet the conditions as they are at the time of construction, but not to maintain it. It means that we would have to enlarge if it traffic conditions increased.

COMMISSIONER ANGUS: If these words were omitted in the way you suggest, could that conceivably be taken to mean that you were not bound to keep the structure in a safe condition?

MR. FRIEL: That is possible, Dr. Angus. It would still have to be constructed "as to afford safe and adequate facilities for all traffic passing over, under or through such structure." It would still leave the Board with the general power to deal with it apart from that.

COMMISSIONER ANGUS: Suppose your structure in the ordinary sense of the word wore out and it was not a question of enlarging it but a question simply

of maintaining it. Would this mean that the Board had no authority to require that it should be put in safe condition?

MR. FRIEL: It would mean that they could not issue an order to the exclusion of a contribution from the grade crossing fund. They would still have general power to deal with it but we would expect a contribution then from the Grade Crossing Fund. That is the purpose of the amendment, anyway. Perhaps we have not worded it as aptly as we might.

THE CHAIRMAN: This is a structure which carries the railway. The Section says "Every structure by which any railway is carried over or under any highway".

MR. FRIEL: It might be an overhead bridge or a subway.

THE CHAIRMAN: Yes, but it is your bridge.

MR. FRIEL: Yes, my lord. If we had a subway that was good for two lanes of traffic and they suddenly decided they wanted four lanes, we could be ordered to enlarge it. While the cost would be apportioned between the municipality and ourselves, there would be no contribution from the Grade Crossing Fund. That does not seem to make sense when there was a contribution from the Grade Crossing Fund in the first instance.

THE CHAIRMAN: Do you have this in mind, that you may have a bridge over a highway and then the highway may be so altered that you would have to build a new bridge or extend your bridge?

MR. FRIEL: It would be a subway in that case. We would have to enlarge the subway, or if we had built an overhead crossing --

THE CHAIRMAN: There are both there.

MR. FRIEL: Yes, there are both there.

THE CHAIRMAN: "Every structure by which any railway is carried over or under any highway" is the language used.

MR. FRIEL: Yes, my lord.

THE CHAIRMAN: Do you say that so long as you build an efficient structure once, you should be relieved for all time?

MR. FRIEL: No, we do not go that far. We say if we are required to rebuild it, we should be able to go to the Grade Crossing Fund, the same as if we were building it new. There is just as much reason for going to the Grade Crossing Fund, and having it available for that purpose as in building in the first instance.

THE CHAIRMAN: You think this amendment will bring about that state of affairs, do you?

MR. FRIEL: That is the intention, my lord. That is about all I can say. I am not too happy about the wording.

THE CHAIRMAN: All right. Go on to the next point.

MR. FRIEL: That finishes that subject, my lord.

THE CHAIRMAN: That finishes it, you say?

MR. FRIEL: Yes.

THE CHAIRMAN: Have you any further amendments, Mr. Friel?

MR. FRIEL: No, my lord. My last matter is rate matters and proposed Provincial legislation or proposed Provincial amendments, it would be.

RATE MATTERS

The Canadian National dealt with this topic in

its main submission at pp. 190-4; that is in respect to rate matters. It is stated there in that they do not propose to deal seriatim with the arguments and contentions contained in the submissions of each Province and in those of the many other submissions presented at the Regional Hearings or to be presented. Inasmuch as most of the submissions dealt with matters which should more properly be dealt with by the Board of Transport Commissioners, the Canadian National, however, did set out its position in the following matters:

1. Regulatory legislation with respect to rates.
2. Equalization of freight rates.
3. Statutory rates.
4. Minimum rates.
5. Classes.
6. Horizontal increases.
7. Competitive rates.
8. Mixing Rule.
9. Development rates.
10. International rates.
11. Interline rates.
12. Reparations.

In regard to the various amendments to the Railway Act, and the Maritime Freight Rates Act, proposed by the Provinces, the Transportation Commission of the Maritime Board of Trade, the Railway Transportation Brotherhoods and the Canadian Manufacturers' Association, the Canadian National is in general agreement with the argument in opposition thereto presented by our friends, the C.P.R. counsel. The Commission will recall that the Canadian National did not call any traffic witness or give any evidence with respect to rate matters. The

various rate matters were dealt with by Mr. Jefferson for the C.P.R. in a very thorough and competent manner, and it did not appear that there was anything that could be usefully added by our giving evidence which would have been in the main repetitive.

I would draw the Commission's attention to the proposed new subsection 6 of Section 9 of the Maritime Freight Rates Act submitted by the Transportation Commission of the Maritime Board of Trade. It reads as follows:-

> ""6. Where freight traffic similar to the preferred movements under this Act moved over any continuous route provided by any joint tariff of tolls or rates that existed prior to the coming into force of this Act, such traffic shall be deemed to be preferred movements if other companies owning or operating lines of railway in, or extending into the select territory meet the statutory rates referred to in Section 7 of this Act."

(Vol. 126. p. 22668)

It was explained that the new sub-section 6 was designed to provide for the alternative routing via St. John, New Brunswick, which the Supreme Court in its decision in 34 C.R.C. 223 in the case of the C.N.R. vs the Province of Nova Scotia, 1928, Supreme Court Reports, p. 106, ruled existed no longer under the provisions of the Maritime Freight Rates Act.

THE CHAIRMAN: The C.N.R. vs. whom?

MR. FRIEL: Versus the Province of Nova Scotia and others. The Canadian Pacific - -

THE CHAIRMAN: What did the court rule there?

MR. FRIEL: It ruled that this gateway was no

longer available, that it was not a preferred movement through St. John, New Brunswick. The Canadian Pacific has supported this proposed amendment, Vol. 2, p. 95 of their main Submission ; volume 36, page 6885 of the Transcript.

THE CHAIRMAN: Pardon me a moment. You say this is Section 6?

MR. FRIEL: It is a new sub-section 6 of Section 9.

THE CHAIRMAN: Oh, I see. I had the wrong place. I thought you said new Section 6.

MR. FRIEL: I am sorry. The Canadian Pacific has supported the proposals - -

THE CHAIRMAN: Just a minute. I want to make sure I have it. No, the last of this volume here is new Section 8 and that is proposed by the Transportation Commission of the Maritime Board of Trade. Have they proposed another one? If they have proposed another one, we have not it here. Have you a copy of it, Mr. Covert? Have you this amendment proposed by the Transportation Commission of the Maritime Board ofTTrade?

MR. FRIEL: It is in this C.P.R. consolidation. It is Vol. 126, p. 22668.

(Page 24225 follows)

(Page 4[illegible] follows)

THE CHAIRMAN: All right. Go on, Mr. Friel.

MR. FRIEL: I said that the Canadian Pacific had supported the proposed amendment, Vol. II p. 95 of their main submission. (Vol. 36, p. 6885 of the Transcript).

THE CHAIRMAN: You say that the Canadian Pacific supported the proposed amendment?

MR. FRIEL: Yes, sir.

THE CHAIRMAN: And you are opposed to it, are you?

MR. FRIEL: Very much opposed to it, my lord. At the present time traffic originating at Canadian National points destined west can only be routed over the Canadian Pacific via the Ste. Rosalie gateway. With the St. John routing, the shipper, if he so desires, can short-haul the Canadian National and give the long-haul to the Canadian Pacific. There are many situations in respect to the so-called gateways in which Canadian National is placed at a serious disadvantage. No evidence has been presented to enable the Commission to make a study, and it is submitted it would require a considerable study and evidence of a tehnical nature before any recommendation could be made. It is submitted there is no justification for any recommendation in respect to this proposed amendment. The whole question is, I respectfully submit, one which should be dealt with by the Board of Transport Commissioners.

THE CHAIRMAN: When you say there is no justification - -

MR. FRIEL: Well, I say there is no justification for taking one gateway and dealing with that when there are many others across the country.

THE CHAIRMAN: All those who support the proposals must see some benefit to shippers arising out of them. Otherwise they would not propose it, I suppose.

MR. FRIEL: I don't doubt that is so, and there would also be considerable benefit to shippers in respect of the

other gateways where we are fettered at the moment. The matter of gateways is a large question and should be considered as a whole, not just one minor instance. I mean, the Canadian Pacific support does not really do much to it, my lord, because it just means that if the gateway were re-established they would divert traffic from us which we now hold.

THE CHAIRMAN: All right, go on.

MR. FRIEL: Amendments to the Railway Act have been introduced by the provinces of Manitoba and Saskatchewan designed to give the Board of Transport Commissioners power to enforce uniform accounting, depreciation, etc. The Canadian Pacific has argued forcefully that the Board has already all the powers required to prescribe uniform accounting, including depreciation, and we concede that there is considerable merit to their argument. Unfortunately the Board itself does not consider that it has the power. In this it is supported by the position taken by both railways a few years ago.

In this connection I would read a letter dated June 10th, 1943, written by Colonel J. Cross, K.C. then chairman of the Board of Transport Commissioners to the Honourable J.E.Michaud, then Minister of Transport:

"Dear Mr. Michaud: Re standardizing and classification of Railway Accounts - Statistics and Returns - Files 18540.46,42935 and 43418.

I beg to acknowledge receipt of your letter of June 8th, 1943, with which you enclosed a copy of a letter from R. C. Vaughan, Esq., President,Canadian National Railways, to you dated June 4th, 1943, and a copy of a memorandum from T.H.Cooper, Esq.,Comptroller of the Railways, to the President.

" While it was thought desirable to call attention to certain statements made by Mr. Cooper on June 1st, 1943, before the Standing Committee on Railways and Shipping, it is scarcely necessary to say that the Board would not permit such a matter to affect in any way its good relationships with Canadian National Railways.

The President of the Railways, in his letter to you, suggests that the Board give further consideration to the subject of uniform accounting on Canadian railways closely styled after the regulations of the I.C.C. immediately we are through with the present emergency. We have also noted Mr. Cooper's observations on the same subject and of the revisions made in the I.C.C. regulations to meet changing conditions. The Board would be pleased to do this but for the question of its jurisdiction.

As stated in my letter of April 19th last, it is clear from Sections 379 and 380 of the Railway Act that the Board has power to prescribe the forms and classifications in which railways prepare returns to the Board. But I do not think that the Act empowers the Board to prescribe the form and classifications in which railways shall keep their books of account. This is also the position taken by Mr. I.C.Rand, K.C., on behalf of the Canadian National Railways, and by Mr. G.A.Walker, K.C., on behalf of the Canadian Pacific Railway Company, in certain correspondence with the Board."

Now there is more to the letter, but the last is not relevant.

THE CHAIRMAN: Is this section 379 the only one that is pertinent to the question?

MR. FRIEL: Canadian Pacific gave another reference. I think it was 33 (2).

MR. EVANS: 31 (26) was the beginning, then back to 33 (2) to find what the Board could do.

MR. FRIEL: We say then, my lord, that it may clearly be a matter for which some further legislation is desired. That, my lord, is the end of my argument.

THE CHAIRMAN: Just a minute. What do you want done? What does the C.N.R. want done about it?

MR. FRIEL: Well, we say that the matter is obscure, and admitted to be obscure by both railways, and it would seem that some further legislation was required to clarify it.

THE CHAIRMAN: Then what do you want done? Would you have the legislation give the Board the power to do what Col. Cross in that letter said they had not power to do?

MR. FRIEL: Yes, my lord. That finishes my submission, my lord, and I thank you for your very kind attention.

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ARGUMENT IN REPLY BY MR. F.C.S.EVANS:

MR. EVANS: May it please the Commission: Before I proceed to argue the question of the proposal of the Canadian National for recapitalization, there are two matters that I think require some clearing up. I think there has been some error in one, and a misunderstanding in another.

With regard to the statement made by Mr. Friel, he was quite right that our amendment to the Postal Act was omitted from our consolidation. That was done through some error in the process of making up the consolidation. The amendment we propose to the Postal Act appears in Mr.Carson's argument at page 23074, volume 128, and I understood Mr. Friel to have stated that that was so and that he agreed with that amendment. I just want to say that he is quite right and it was an omission on our part.

Then with regard to the further statement by Mr. Friel as to the measure of agreement on the matter of agreed charges, Mr.Sinclair in his argument did say that the Canadian Pacific had no objection. That appears at page 23741. Now, on looking into that, we find that Mr. Sinclair made that statement to the Commission under a misapprehension. I have to go to the Canadian Ntional brief in order to make that clear. On page 180 in the brief of the Canadian National there is set out the original proposal of the Canadian National for amendment of the Transport Act with regard to agreed charges.

At the time Mr. Jefferson gave his evidence discussions had proceeded between the two companies as to the desirability or otherwise of the Canadian National amendment as proposed in its brief, and the Commission may recall that Mr. Jefferson had two objections to the original proposal, and that he indicated in his evidence that the discussions which he had had with the Canadian National had resulted in some proposed changes which were satisfactory. Now then, in order to make the matter clear I should say that Mr. Jefferson gave his evidence on this subject on February 23rd, in volume 82, and at that time he had before him a letter dated February 7, 1950, from Mr. McCoy to him, attached to which I find two additional changes in the Canadian National original proposal designed to meet Mr. Jefferson's objections.

Now, it is true that when the Canadian National amendments came in on or about April 12th in accordance with the Commission's directions we should have picked up the differences that occurred in the drafting, but we did not, and Mr. Sinclair's statement in his argument was based on the changes which appear in the attachment to the letter of February 7th. It was really our fault for rushing into the thing a little too quickly, but I just want to say in passing that the principal changes about which we had originally taken objection were the omission from sub-paragraph 1 of section 35 of the proviso that all rail carriers must join in making the agreed charge.

The amendment proposed by the Canadian National merely has a proviso that other rail carriers may be present at the negotiations and may be permitted to join in making the agreed charge. That does not in essence remove the basic objection we had. It permits one carrier to go ahead in any case, and only permits another to

enter into the negotiations and join if he sees fit. It really does not go to the root of our objection.

Then there was an omission of language, the importance of which is perhaps not quite so clear, and I am not making any particular point of it, but Mr. Jefferson's second point was that an agreed charge, as the present statute provides, must be expressed in cents per hundred pounds. Now, I am not saying that the omission of this language is something to which I would object. It is open to question, and they did tell us about that and we were consulted, and so I cannot take objection to that.

The third one, which I think is really important, is this: If your lordship will notice, at page 180 of the Canadian National brief -- I am not going to argue this -- if your lordship will look at subsection (1) as there drafted you will see that subsection (1) begins with the words "Notwithstanding anything in the Railway Act", and then subsection (2):

> "Agreed charges shall become effective upon the same statutory notice as prescribed by the Board for competitive tariffs."

Now, in the amendment as actually presented, the words "Notwithstanding anything in the Railway Act, or in this Act" are made to apply to all of the subsections in the section.

THE CHAIRMAN: Yes, I called attention to that.

MR EVANS: And subsection 2 as now drafted seems to me, with respect to our friends, to go a little further than I would want to supoort. Subsection (2) says:

> "A duplicate original of the agreement setting out the particulars of the agreed charge shall be filed with the Board within seven days after the date of the agreement" --

and these are the important words --

"and the agreed charge shall become effective thirty days after the date of such filing."

Now, since they have moved up to the top of the section the words "Notwithstanding anything in the R ilway Act, or in this Act", the express use of the words "shall become effective" might be construed, and I think probably would be construed, as indicating that the Board could not reject or disallow the agreed charge on the ordinary principles of rate-making which apply under the Railway Act, and my own view is that that goes too far. I do not want to argue it; I just want to make my position clear.

THE CHAIRMAN: You think it would be safer to restrict those words "Notwithstanding anything in the Railway Act" to subsection (1) of 35?

MR EVANS: Well, even then, you would have the difficulty of the use of the word "shall" -- "the agreed charge shall become effective" -- and I have not studied the matter too carefully, because of the fact that perhaps we wrongly assumed that the sections in the brief were merely to be dealt with as the letter indicated. I had not made a study of what I think a very substantial result of the two changes in the proposed new section. The two changes are the moving up of the words "Notwithstanding anything in the Railway Act" and, in subsection (2) itself, "The agreed charge shall become effective". There is rather a suggestion there that even without the "Notwithstanding anything in the Railway Act" the making of the agreed charge to become effective rather takes away by the use of the word "shall" the Board's power to reject it as unreasonable or as discriminatory.

THE CHAIRMAN: Before you go on, Mr. Evans, to come back to subsection(1) of 35 as proposed by the Canadian

National: You referred a moment ago to the last few words in that subjection.

MR EVANS: The provison? Yes, the proviso---

THE CHAIRMAN: Yes:

"The Board shall not approve an agreed charge unless the competing carriers by rail join in making the agreed charge."

MR EVANS: Yes.

THE CHAIRMAN: Now, the new formula is different.

MR EVANS: Yes.

THE CHAIRMAN: Do I understand that you accept the new formula?

MR EVANS: No, sir; I have grave doubt as to whether that is desirable. As I say, our objection, which we thought had been agreed to by the Canadian National -- I am sure it is a misunderstanding on my friends' part, just as it is on ours -- was the intention to restore the language as it now is in the proviso in subsection (1), but the proviso as they now have it only give the other railway the power to come in on the discussions and the power to join, but it still leaves to the one railway the right even arbitrarily if it chooses to do so to make the agreed charge notwithstanding; and I think that goes too far. It goes farther than we thought they were intending to go.

THE CHAIRMAN: And you are opposed to it?

MR EVANS: Yes, sir. We think that the original proviso should be restored. I should say this---

MR FRIEL: My lord, I just wanted to speak briefly to my learned friend's objections. I would tell him that with respect to that change in the first part of section 35 our Traffic Department informed me that that had been cleared with the Traffic Department of the

Canadian Pacific. I have no reason to doubt---

MR EVANS: I expressly inquired as to that, and I cannot find that there was in any case -- the Traffic Department of the Canadian Pacific were relying on the letter of Mr. Friel on February 8th, I think it was -- I have referred to it -- where the express amendment is added by restoring the original proviso. It has been a misunderstanding.

MR FRIEL: Well, we gave considerable thought before we made the change, and our Vice-President, Mr. Fraser, told me that that had been cleared with Mr. Jefferson.

MR EVANS: I am sorry there has been this misunderstanding about it, but I do want to make our position clear.

MR FRIEL: Then, my lord, as to the other point, it may be that our proposed amendment has gone too far in not giving the Board jurisdiction to disallow a rate which was perhaps either non-compensatory or was subject to the charge of unjust discrimination. We would not oppose an amendment again which would empower the Board to disallow an agreed charge which offended the discrimination sections or the just and reasonable sections, as long as the agreed charge was permitted to become effective within the time stated. That is the main thing, that the charge become effective within the time stated in our proposed amendment.

THE CHAIRMAN: I have your amendment before me now. Would you point exactly to the part of it that is in question

MR FRIEL: It is the second part, my lord:

A duplicate original of the agreement setting out the particulars of the agreed charge shall be filed with the Board within seven days after the date of the

agreement, and the agreed charge shall become effective thirty days after the date of such filing."

You see, there is no power left there to the Board to disallow that agreed charge; it becomes effective automatically at the end of thirty days.

THE CHAIRMAN: I asked you about that the other day.

MR FRIEL: Yes, my lord.

THE CHAIRMAN: And you said that the thirty days would give the public notice of what was going on.

MR FRIEL: Sufficient notice, yes, my lord.

THE CHAIRMAN: And if anybody objected they could come in, but not only within the thirty days; they might come in after that.

MR FRIEL: Yes, that is right, my lord.

THE CHAIRMAN: That is, after the agreed charge had become effective.

MR FRIEL: That is correct.

THE CHAIRMAN: Then what is the objection now?

MR FRIEL: Well, Mr. Evans complains that there is no power in the Board to disallow it by reason of the fact that it is discriminatory or non-compensatory.

THE CHAIRMAN: Oh, yes; that is because you have said that all this goes on notwithstanding anything in the Railway Act.

MR FRIEL: Yes, my lord. I say we are not pressing that; that part of it is not so important. If there were reserved to the Board the right to disallow it after it became effective on proof that it was non-compensatory or that it was discriminatory, we would not object to that. Perhaps the Canadian Pacific would not object to it either if that provision or that safeguard were there.

MR EVANS: That is my objection to subsection (2).

That is all I am saying. If that subsection were fixed up I would have no objection.

MR FRIEL: Well, you would not object to it becoming effective without prior approval?

MR EVANS: Oh, no.

THE CHAIRMAN: That is, your exception to the Railway Act may go too far.

MR FRIEL: Yes, my lord.

THE CHAIRMAN: You do not want it to go so far.

MR FRIEL : Well, we do not object to it going that far, but---

THE CHAIRMAN: You want to save just exceptions which may be taken today -- unjust discrimination, for instance.

MR FRIEL: We do not think that is necessary, but we can see where the shippers and the Canadian Pacific have taken the same objection, and we cannot object if the Board has the power to disallow it afterwards on proof of those matters. It does not go to the root of our amendment, anyway.

THE CHAIRMAN: You see, there is already section 36 in the Act which you are not disturbing.

MR FRIEL: That is right, my lord.

THE CHAIRMAN: Which provides a procedure whereby any representative body of shippers may come in, applying to the Minister first. I do not know just why, but that is what the Act says.

MR FRIEL: Well, he can only apply it in the national interest. He would have to consider the whole picture. I do not think that would allow the Board to consider---

THE CHAIRMAN: That is the point. Is that broad enough to allow a single shipper to come in?

MR FRIEL: I would not say so, my lord.

THE CHAIRMAN: Well, all right, then.

(Page 24238 follows)

MR. EVANS: If I may turn to deal with the subject of Canadian National recapitalization, the section of our brief which deals with it will be found at page 109 of Part I. Mr. Walker in his evidence in chief (see P. 13393) made the following statement:

> "The danger of injury to the Canadian Pacific (and it cannot be too strongly emphasized) lies in the suggestion that the Canadian National results might be used as a yardstick on the footing that its requirements should be limited to earning its fixed charges (after these have been substantially reduced) and a small surplus, without any assurance or direction that the system should and must be allowed to earn a fair return on the investment in railway facilities.
>
> "Such a situation would inevitably prevent the Canadian Pacific from earning any return on the capital invested in its railway tnerprise, permanently impair its credit, and, it is not too much to say, would ultimately result in its bankruptcy."

As our Brief indicates and as Mr. Walker stated and as I have stated on several occasions to your Commission, the position of the Canadian Pacific does not involve any suggestion that the Canadian National should not be entitled to such relief from the burden of fixed charges as it may be able to establish is necessary and proper. What the Canadian Pacific is concerned with is to see that the nature of the relief and the conditions under which it is granted, if it is granted, will not place the Canadian Pacific in jeopardy (see my opening

statement to Mr. Cooper at p. 18916).

Mr. Gordon, in his evidence at p. 18387 of the transcript (Volume 98) made two suggestions for dealing with the matter of fixed charges.

First, the interest-bearing obligations, amounting to approximately $760,000,000, should be exchanged for equity capital and reflected in the Balance Sheet as such, (Note that this amount, according to the Annual Report p. 28 has been reduced as at December 31, 1949 to $743,661,000.) and the interest thereon would cease to become payable.

Second, that the Government should acknowledge an indebtedness to the Canadian National in the amount of $300,000,000 bearing interest at 3% per anhum until discharged. This amount would be set up in the accounts of the Canadian National as a capital fund tobe drawn on from time to time to retire interest bearing obligations in the hands of the public or for capital additions to the property. In consideration for the indebedness to the Government, the Canadian National would issue a commensurate amount of equity stock to the Government.

The result of these suggestions would be an immediate reduction in fixed charges equal to $21,798,283 per annum and an increase in net revenue amounting to $9,000,000 per annum as a result of the indebtedness amounting to $300,000,000 which the Government would acknowledge. The net result is that the relief to the Canadian National would amount to $30,798,000 per annum (see p. 18675).

It really makes no difference whether the $300,000,000 is applied to capital expenditures or to the reduction of debt held by the public. The result must inevitably be the equivalent of a reduction of about

$9,000,000 per annum in fixed charges as compared with what they would be in the absence of the creation of such a fund. As Mr. Norman put it in his evidence (p. 20629) this constitutes a subsidy which becomes a hidden subsidy in . perpetuity if and to the extent that the capital fund is drawn upon for the purposes set out in his statement.

That is to say, what Mr. Norman had in mind was while the asset appears in the Canadian National books one can always determine what the amount of the income from the Government for interest on that sum amounts to, but to the extent that it is drawn down and is invested in railway property then that is lost sight of because the only thing that shows is equity stock which may or may not have a return.

The position of the Canadian National is this -- in effect, the Canadian National says we are embarrassed by the burden of fixed charges with which we are faced and by the fact that we have to advertise each year to the people of Canada that their publicly-owned railway sytem is incurring substantial deficits. This, they say, is not only embarrassing to the Company but is a matter affecting the morale of its officers and employees.

With that feeling the Canadian Pacific is in full sympathy. It can understand that a position of hopeless financial distress can and does have that effect. Indeed, as Mr. Walker pointed out in his evidence in chief (see pp. 13370-13375) of the transcript and p. 6 of the printed pamphlet) the inability of Canadian Pacific to earn adequate net revenues (while gross earnings were at the highest level in its history) has produced a like feeling on the part of its

officers and employees, "differing, if at all, only in degree, from that of the officers and employees of the Canadian National."

The Canadian National, I think, quite fairly asserts that if the predecessor railway companies, the Canadian Northern, the Grand Trunk and the Grand Trunk Pacific, had not been taken over by the Government, they would have passed through some form of bankruptcy proceedings presumably those provided by the Exchequer Court Act. There can be little doubt that in these circumstances some scaling down of the fixed charges of these Companies may well have resulted. Canadian Pacific does not suggest otherwise. Its expert witnesses were all quite frank in their views that such a scaling down may well be justified. It must, however, in all fairness, be borne in mind that in the event of bankruptcy there would have emerged from the proceedings one or more railway companies with a new capital structure and that such new companies normally would be privately owned and would have striven to earn and would have been entitled to earn a reasonable return on its property investment.

This indeed was the recommendation of Mr. A. H. Smith, the Chairman of the Royal Commission which reported in 1917, in his minority report. In substance Mr. Smith's minority report was that the predecessor companies of the Canadian National should be left in private hands and not taken over by the Dominion Government as was recommended by the majority report.

To sketch out what was in Mr. Smith's report, he felt that the Canadian Northern should take over the Grand Trunk Pacific in the west and that the Grand Trunk in the east should take over Canadian Northern lines .

in the east. That was in substance what he recommended.

In passing, I think I should refer to the statement made by Mr. O'Donnell at page 23780 where, in his argument, he stated that the Drayton-Acworth Report, as the majority report has come to be known, had never intended "that these interest charges should have been placed on the new company".

In support of this he refers to Recommendation No. 28 as follows:

> "28. We recommend that the Government assume responsibility to the Dominion Railway Company for the interest on the existing securities of the transferred companies."

Mr. O'Donnell went on to say:

> "If that had been done -- and they were $35 million odd at that time . . . if they through the years had been relieved from that $35 million a year, it would never show the deficits that have been recorded against it in the intervening years".

Mr. O'Donnell was thus trying to suggest to the Commission that the majority report never intended that the Canadian National was to have any responsibility for meeting the interest on the funded debt of the constitutent companies taken over. I say that this interpretation of the majority report is entirely and completely refuted on the face of the report itself.

For example, on page lxxi, under the heading of "Finance of Dominion Railway Company", it is quite clear that the Trustees --

> "will enter into possession of a complete and self-contained system of 20,000 miles. The present fixed charges amount to about

$34,000,000 per annum, or $1,700 per mile. If we allow another $6,000,000 for annuity to Grand Trunk shareholders, for composition with Canadian Northern Income Debenture holders, and for interest on new capital required immediately, there will be at the outset fixed charges of roughly $40,000,000 or $2,000 per mile. In respect of the 3,777 miles of this system which are comprised in the present Government Railways there will not be a single dollar of bonded indebtedness. And this fact will be of considerable help to the Trustees in their necessary financing."

The Commission will see that quite obviously they looked upon the fact that the government railways were being turned over free of debt as a very considerable advantage, and that they looked upon the other lines being turned over subject to fixed charges of $40 million per annum.

On page lxxii the following statement is relevant:

"We have recommended that the Intercolonial and the Transcontinental lines should be handed over free of cost for the reasons which we have given above. But we think it should always be borne in mind, both by the trustees and by the public, that the real capital of the new system includes the cost of these lines. In other words the trustees are responsible for a return, not merely on the capital of the companies' railways acquired, but also on the capital invested in the Government railways. . . .

"We would go further and lay it down in

terms in the Act of Parliament creating the Board of trustees that it was the duty of the trustees to operate their system as a commercial concern . . ."

On page lxxiii the following will be found:

"We have recommended" --

This is directly referable to the numbered recommendation appearing later, No. 28.

"We have recommended that the Government should assume responsibility towards the trustees, but not directly towards the present holders," --

I submit that is a negation of Mr. O'Donnell's suggestion that the Canadian National should not have had, if the report had been followed, any responsibility for these charges.

" -- for the interest of all the securities charged on the new combined system."

The foregoing quotations make it perfectly clear that the new so-called Dominion Railway Company was to take over and service the debt of the predecessor companies and it is also clear that the Intercolonial and Transcontinental lines were to go over free of debt and this was considered to be a great advantage to the new company, since these properties could be used for future financing. If anything further is required, Recommendation Paragraph 52, page lxxxix, contains the following:

"52. We have endeavoured to estimate the annual liability of the Government to meet interest unearned during the first few years of the new scheme, and we put it at about $12,500,000 per annum."

That has to be borne in mind in relation to the fact that the fixed charges with the additional annuity of $6 million would amount to $40 million. They felt that during the initial years the liability of the Government to make good deficits would be $12,500,000 per annum.

> "We think this amount should diminish steadily but not slowly; and that with proper economic and politically undisturbed management the attainment of a satisfactory financial result is only a question of time."

I submit that nothing could possibly be clearer than that the new company was to have the primary responsibility just as would a commercial company of carrying and servicing the debt which it took over from the predecessor companies. It is equally clear that Recommendation 28, relied upon by Mr. O'Donnell, exhibited the intention of the majority report that the Dominion should bear the ultimate responsibility but not the primary responsibility. See the language of the Recommendation -- "assume responsibility to the Dominion Railway Company"; and see also the quotation earlier referred to at page lxxiii -- "We have recommended that the Government should assume responsibility towards the trustees, but not directly towards the present holders."

Canadian Pacific would have had to face competition from such a reorganized company just as those United States railways who have come through the depression without a bankruptcy have had to face competition from those less fortunate companies which have had to be reorganized. There can be no doubt whatever that many United States companies have struggled through a period of financial crisis with a high level of fixed charges and that they are, in consequence, at some

disadvantage in meeting competition from those companies which have been reorganized and which have had their fixed charges reduced.

That is something which any commercial enterprise must meet from time to time and for which such commercial enterprises can have no real ground for complaint.

I should have perhaps have said before I finished dealing with the taking over of these companies that under the report of the Drayton-Acworth Commission and the statute which followed there was a good deal of the capital of these companies written down. All of the equity was found substantially to have no value, although the Drayton-Acworth Report found in favour of an annuity amounting to $6 million per annuam to make some compensation to Grand Trunk shareholders, and to compose the claims of the Canadian Northern income debenture holders, and for interest on new capital which would be required for rehabilitation, I assume.

The position of the Canadian Pacific is, however, very different from that of such a company. I am referring now to reorganizations in the ordinary process. It competitor the publicly owned Canadian National possesses immeasurable advantages as Mr. Walker put it in his evidence (p. 13390). He went on to say that the Canadian National

> "need not concern itself with the maintenance of credit because the securities of the system are backed by the guarantee of the Dominion Government . . . The Canadian Pacific, on the other hand, can borrow only in a highly competitive money market, and, if it is to provide efficient and modern services, it must earn

consistenly a reasonable return on the substantial investment in the railway enterprise. Its losses must be borne by the shareholders."

Mr. Walker also referred (page 13376-7) to several passages in the Drayton-Acworth Report which made it clear that, in the opinion of that Commission, competition with railways

"operated by the Government stands on an entirely different footing. It would be at any time possible for the Government deliberately to adopt a policy of lowering rates, in some part or throughout the territory involved, below a commercial basis, and making up the deficiency out of general taxation. It might be argued that such a policy was justifiable on the ground that the general prosperity and development of the country would be thereby promoted. But while conceivably it might be proper to tax the public to develop the country, though in fact it would not be the whole public but only certain portions of it that would benefit, it could not possibly be fair to impose a special tax upon the Canadian Pacific Railway shareholders for the purpose. And yet it is evident that this would, in fact, happen. The Canadian Pacific Railway would be absolutely forced to follow any rate reduction made by the Government railways, on pain of losing the business entirely."

THE CHAIRMAN: Is there anything tobe said for the suggestion made the other day on that point by Mr. O'Donnell?

MR. EVANS: I am going to deal with that. I have a side note because this was prepared before he did it. If the Commission wants the reference to where Mr. O'Donnell's statement on that will be found, it is at page 24068. He took the position at that time that that referred only to government railways, and that the provision by which government railways became subject to the Board of Railway Commissioners, as it then was, was the means by which what the Drayton-Acworth report was dealing with hadintended should be done.

My view about that is that, whatever may be said about the Board of Transport Commissioners, nothing in my view really goes to the meat of the point I am discussing that railways operated by the government -- and I could include for the government -- do stand on an entirely different footing because, whatever may be the powers of the Board of Transport Commissioners, the Board of Transport Commissioners never could force the railway to raise its rates unless the government felt it desirable to do so.

It does not seem to me it is more than a debating point Mr. O'Donnell has got there. Then, if anything further is needed, reference to page lxxii, which I read previously --

THE CHAIRMAN: Page lxxii of what?

MR. EVANS: Of the Drayton-Acworth Report, the one which said:

> "We have recommended that the Intercolonial and the Transcontinental lines should be handed over free of cost. . . ."

And then later:

> "In other words the trustees are responsible for a return . . ."

Then in the second quotation I make at page 3B of my notes they were to "operate their system as a commercial concern. . ." Obviously the reason for that recommendation was because of the Canadian Pacific. There would have been no particular reason why, if there was no privately owned competitor for the Canadian National, that they should have been so insistent on that. The whole report indicates quite clearly that they have in mind the position of the Canadian Pacific.

As a matter of fact, they were asked to study the position of the Canadian Pacific, and one of their express recommendations is that the Canadian Pacific should be left alone. Therefore it does seem to me that it is quite clear that this quotation I now make cannot be answered merely by saying that the Drayton-Acworth report cured that difficulty by referring rate-making functions in respect of government railways to the Board of Transport Commissioners.

I think perhaps I should refer also to the Duff Report. The first reference is paragraph 25, page 12. I might read that paragraph. I think it is right on the point because it shows that the Duff Commission was also concerned with the position of the Canadian Pacific. Paragraph 25, page 12, reads as follows:

"As a result" --

He has been talking about unstinted financial support to the national system.

"As a result, the Canadian Pacific Railway Company, the largest taxpayer in Canada, has been

subjected to the competition of publicly-owned and operated railway lines, supported by the financial resources of the country. They had honourably discharged their original contractual obligations with Parliament, and the company's lines had played a great part in binding together the weatern and eastern provinces of the Dominion. By common consent, the company's administrators had brought faith, courage and invincible energy to the task of building its lines through the undeveloped west. The company's achievement commanded the admiration of both railway operators and the public, and has been a material factor in causing Canada to be favourably known upon three continents. Their operations brought profit to shareholders, and the enterprise became a national asset of acknowledged value and importance to the Dominion."

(Page 24250 follows)

Then if I may read paragraph 26 - -

THE CHAIRMAN: What is the paragraph you have just read?

MR. EVANS: That was paragraph 25, my lord. Paragraph 26 reads as follows:

"26. Confronted with the unrestrained competition of the publicly-owned railway, the Canadian Pacific claimed that to protect their business it was necessary that they should meet their competitors in the construction of branch lines in the prairie sections, and generally in the character of service and equipment incident to the activity of their aggressive rival."

Then there is another paragraph at page 43, that I should like to read. It is paragraph 114. It is a rather long one, and I do not want to take up too much time reading these, but I think it is perhaps on the point. Speaking again under the heading of the element of competition which is part five of the report, this is what is said:

"114. Had this competition existed between private companies, each dependent upon its own resources to raise the capital and to pay the bill, it is likely that years of adversity would have brought wisdom. But one of these competitors was backed by the long purse of the State, and the consequences of these errors and extravagances must be borne by the taxpayers, and in this connection we must not lose sight of the fact that the Canadian Pacific, the principal rival of the Canadian National Railway, was at the same time the largest taxpayer. The evils of this unfortunate competition did not rest there. Challenged by the state-subsidized National System, the Canadian Pacific felt compelled, in the defence of its own interests, to meet the challenge. Now in the interests of both railways and of the taxpayers

"of Canada there must be a cessation of aggressive and uncontrolled competition, and while the Canadian Pacific must be afforded proper protection from the state-subsidized activities of the Canadian National, it is not possible to absolve the privately-owned company from a share in the general competitive folly."

THE CHAIRMAN: That does not seem to have in mind competition by way of reduced rates.

MR. EVANS: No. It is in principle an indication of the position in which the Canadian Pacific, a privately-owned company, finds itself in. It is perhaps more directly referrable to the main question as to whether we are meddling in the Canadian National affairs by being here. But it does seem to me to be in point. The rate-making function is only one of the two points I made as I proceed in my argument. The effect of the competition of the publicly-owned Canadian National can be felt in several ways. It can be felt in the way of refraining from going along with an application for a rate increase which the Canadian Pacific needs, and as I mention later on, also as related to the provision of this $300,000,000 fund for the Canadian National for capital purposes which enables the Canadian National to go ahead in times when the Canadian Pacific might not have the money to do it, to build up a better service, and to build branch lines, and to otherwise have great competitive advantages over the Canadian Pacific. But I am perhaps anticipating.

THE CHAIRMAN: Before you go on, Mr. Walker says:

"It would be at any time possible for the government deliberately to adopt a policy of lowering rates, in some part or throughout the territory involved, below a commercial basis, and making up the deficiency out of general taxation."

MR. EVANS: Yes.

THE CHAIRMAN: And then later on he says: "The Canadian Pacific Railway would be absolutely forced to follow any rate reduction made by the government railways, on pain of losing the business entirely."

MR. EVANS: Yes.

THE CHAIRMAN: I understood Mr. O'Donnell to say the other day that such a thing could not occur because the Board of Railway Commissioners had control of all rates, and could prevent that occurring. I want to know whether you can tell us of anything in the Railway Act which would affect this situation.

MR. EVANS: No, sir; there is not.

THE CHAIRMAN: There is not anything?

MR. EVANS: No. I was not going to mention this, but I think I owe it to myself and to the Commission to do so. The recent increase of 4 percent is not to be applied to the competitive rates, because of the position taken by the Canadian National, not because of the position taken by the Canadian Pacific. We want to apply that. I am not saying we are right and they are wrong, but it does show the power of one railway to say, "We will not go along with an increase" which has an influence on the ability of the other to make an increase in rates.

THE CHAIRMAN: You tell us, do you, obiter, that the Canadian National does not intend to apply this recent increase on competitive rates?

MR. EVANS: We have asked them, and they have refused to do so.

THE CHAIRMAN: That means, does it, that you likewise, will be unable to apply it in your competitive rates?

MR. EVANS: Yes. I am quite prepared to admit that my friends may be right in the result, and that we may be wrong.

But we want to try it, and they do not. I am saying that that is an indication that one railway can prevent the other from increasing rates.

All right, Mr. O'Donnell, I am trying to present an argument here, and I do not like this muttering that is going on.

MR. O'DONNELL: I have a perfect right to speak to Mr. Fairweather; I am not disturbing you.

MR. EVANS: I ask that Mr. O'Donnell please do not carry on that muttering.

MR. O'DONNELL: I am not saying anything to you, and I do not intend to.

MR. EVANS: It is thus very clear that the Canadian Pacific as a privately-owned enter;rise is in a difficult position in its day to day competition with the publicly-owned Canadian National, quite apart from any question of recapitalization. Canadian Pacific requires from time to time to raise capital for improvements and betterments to its system, for the construction of branch lines, and for the purposes outlined in the evidence of Mr. Crump to your Commission. Unless it has adequate earning power to establish its credit, the Canadian Pacific cannot raise such capital monies. It dare not, even if it could, raise all of such monies by capital borrowings on which fixed interest charges are payable. If it does so it will find itself in a position in times of depression of having a level of fixed charges which it cannot meet.

Canadian Pacific has been fortunate in recent years to have outside sources of income with which to tide it over and with which to reduce its fixed charges. Indeed, it is not too much to suggest that had it not had this other income it would be in very difficult financial circumstances today and its capital stock would undoubtedly

be worth only a fraction of its present low market price.

In these circumstances, the proposals for recapitalization of the Canadian National are of supreme importance to the Canadian Pacific. The result of these proposals is that the Canadian National, which has heretofore, been required to earn approximately $46,000,000 to meet fixed charges, will have to earn only approximately $16,000,000 -- I believe it is now $17,000,000 -- for that purpose. On the other hand, the Canadian Pacific, even though its fixed charges are at approximately that same level, must earn something more than $20,000,000 to provide a 4% dividend on its preferred stock and a 5% dividend on its ordinary stock from rail earnings. Moreover, Canadian Pacific must pay a substantial income tax on any earnings over and above those sufficient to pay fixed charges and must, in addition, earn a substantial surplus. I ask your Commission to look by contrast at the position of the Canadian National. However embarrassing a substantial level of fixed charges may be to the Canadian National, the embarrassment is not one as serious as that which faces a privately-owned company as a result of a high level of fixed charges. A privately-owned company which is unable to meet its fixed charges has no alternative but default and possible bankruptcy.

It will thus be seen that the Canadian Pacific is vitally concerned that the reduction in fixed charges should not result in the reduced requirements of the Canadian National being taken as the yardstick for rate-making in lieu of the Canadian Pacific.

Counsel for the Canadian National took the position before your Commission (pp. 18814-5) that the Canadian National does not seek to become the yardstick for rate-making. He argued therefore that the Canadian Pacific has nothing to fear from the proposals. In fact,

in argument he takes the position that it is really none of our business since it is merely a matter for settlement between the Canadian National and its owners.

The position is, however, not quite so simple. There has been for some years past a very substantial opposition to increases in freight rates. It is not too much to say that the matter of increases in freight rates has become one of great political controversy. In these circumstances, if, even though the Canadian National does not seek to become the yardstick, the recapitalization should become effective and the public should see the Canadian National earning substantial annual surpluses, the pressure would become very strong to have the Canadian National made the yardstick in order to achieve a reduction in rates.

It is true that this might really be a delusion in that apparent surpluses of the Canadian National would have been achieved by transferring to the taxpayer the fixed charges which had formerly had to be met by the Canadian National out of its railway earnings, if it had them.

The effect on the Canadian Pacific would, however, be disastrous. Not only would it, as a taxpayer, and probably one of the largest taxpayers in Canada, be called upon to pay in its taxes a proportion of the transportation cost transferred from the shipper to the taxpayers as a result of the reduction in the Canadian National fixed charges, but it would be unable to raise its rates to a sufficient level to provide itself with an adequate income. This could only result in the bankruptcy of the Canadian Pacific and probably its acquisition by the Government.

It will thus be seen that the Canadian Pacific,

if it is to remain privately-owned, must have some protection from such a possibility. This does not mean that the necessity for providing such a protection need either deprive the Canadian National of relief in some form from fixed charges or involve the public in any greater expense for the maintenance of the railway transportation systems of this country.

The reason I put that in that form is that no matter what happens, if rates do not go up sufficiently to maintain the Canadian Pacific, ultimately the taxpayer is going to have to assume the burden because it is going to have to be taken over.

This leads to a further difficulty in connection with the Canadian National submission, namely, the proposal for handling surplus earnings. The proposal of the Canadian National was originally that any surpluses it may earn after payment of fixed charges would be retained by it as a reserve fund for (a) capital expenditures for non-revenue-producing improvements and betterments and (b) a rate stabilization fund. The Canadian National has now asked that this be considered as deleted from its Submission. They argue that under Section 10 of the Capital Revision Act they "may" pay but admit that they need not pay such surpluses over to the Government.

While there has been a disposition on the part of the Canadian National to treat this as of little importance, it is, I think, quite clear that the Canadian National claim the power to establish such a fund into which annual surpluses can be put if the Directors choose to do so. The retention of surpluses will bring about pressure upon the Government and upon the Canadian National to use such surpluses for the purpose either of reducing

rates or of making unnecessary an application by the Canadian National for increases in rates.

I come now to an examination of the reasons given by the Canadian National for its recapitalization proposals. First, it is argued that its fixed charges are quite out of proportion when measured in relation to the fixed charges of other railway companies, including the Canadian Pacific; second, that it has no prospect of earning its present level of fixed charges and, third, that the effect of reporting substantial deficits each year is bad upon the morale of the officers and employees. I shall deal with these in order. I have dealt with the matter of moral.

First, the comparability of the Canadian National fixed charges with those of other roads quite obviously depends on whether there is any real basis for establishing comparability with privately-owned railway companies as the Canadian National has done. Admittedly, the fixed charges of the Canadian National are higher proportionately than are those of the privately-owned railways with which the comparison is made in the Canadian National brief and evidence.

THE CHAIRMAN: Have you born in mind there the recommendations in that regard that the auditors of the Canadian National made?

MR. EVANS: I have not them particularly in mind, although - -

THE CHAIRMAN: Have you read them?

MR. EVANS: I have not read them recently. I remember reading them. I heard Mr. O'Donnell give them the other day. With respect, I am not too much impressed with that, because quite obviously the auditors would not have had in their minds this problem with which we are

MR. EVANS: At the adjournment I was dealing with the first point having regard to the comparability as between Canadian National fixed charges and those of the Canadian Pacific and other privately-owned roads.

If I may proceed, Mr. Northey Jones in replying to Mr. Covert at page 20467 (Volume 112) gave it as his opinion that in the case of the Canadian National the situation is different in that the capital of the Canadian National does not have to come from the investing public. "They get their capital from the Government." Again, replying to Mr. Covert at page 20488, in comparing the position of the Canadian National with that of the Canadian Pacific Mr. Jones said:

> "It is entirely different. They (the Canadian National) have the great background of the credit of the people of Canada and the Canadian nation behind them whereas the other has its own credit on which it has to raise its capital."

At pp. 20558 and 9 under cross-examination by Mr. Frawley, Mr. Jones stated that the people "will not invest in the Canadian Pacific as a railroad enterprise unless the wages paid to the capital in that enterprise are commensurate with what are paid in other enterprises." He was thus distinguishing between the financial problems of the Canadian Pacific and the Canadian National.

Mr. Norman at pp. 20628 and 9 (Volume 113) said:

> "It seems to me that the Canadian National cannot be compared with an investor owned railroad in reorganization or bankruptcy proceedings. There is no problem of marketability because all of its debt is either held by the Government or is guaranteed by the Government. Further, the reorganized road is called upon to endeavour to

service its equity stock for reasons stated above, whereas the C.N.R. would, under the proposal, have exchanged an obligation calling for a definite payment of interest for a type of security the servicing of which is entirely of a voluntary nature."

Mr. Elliott, at pp. 20819-20 states that there must be a clear distinction between government enterprise with access to treasury financial support and private enterprise which must rely on more fickle sources of capital.

At page 20830-1 Mr. Elliott distinguished between reorganization of public and private companies in that the taxpayers are interested in publicly owned companies and the Canadian Pacific is a large taxpayer.

It will thus be dangerous for your Commission to accept as a measure of the propriety of the level of Canadian National fixed charges a comparison based on the proportions of fixed charges to investment in privately owned railway companies, this for the reason that privately owned companies must be able to service their fixed charges at all times or face bankruptcy whereas in the case of the Canadian National, there is no such danger.

Moreover, privately owned companies must to some extent rely upon financing by means of equity securities upon which, while there is no fixed earning required, a dividend must be paid if such financing is to be carried out.

I, therefore, submit to your Commission that the Canadian National recapitalization cannot be justified on the basis of comparability of its fixed charges with those of privately owned companies.

Second, the Canadian National recapitalization

proposals are based upon the allegation that they are the minimum required to ensure in future that the Canadian National may have the ability to meet its fixed charges and possibly to produce a small surplus.

There can be no doubt that the matter of earning power is perhaps the most important question upon which the whole proposal for recapitalization of the Canadian National turns. I think, however, that in considering the question of recapitalization based upon future earning power, one must always have in one's mind the fact that while in the case of a privately owned company being reorganized, earning power is the sole test by which the ability of the reorganized company to carry its fixed charges must depend, that is not equally true of the Canadian National. It would, for example, be sound to argue in the case of a privately-owned company that it should not emerge from the reorganization with fixed charges that are not quite clearly within its future earning power. It is easy to see that in the case of a privately owned company any reorganization which leaned towards too high a level of fixed charges would fail in its purpose and would produce in future a further need of reorganization.

COMMISSIONER INNIS: Do you think there has been a misdirection in the Order in Council, Mr. Evans? I think it is 2(c) - ". . . establishing and maintaining fixed charges of that company on a basis comparable to other major railways in North America".

MR. EVANS: No.

COMMISSIONER INNIS: That is, there is no possibility of making a comparison?

MR. EVANS: I say they ask the Commission to consider the advisability or otherwise of it, and I am

speaking to the question of whether it is advisable. In my submission it is not possible.

COMMISSIONER INNIS: That is what I mean -- if it is not possible, it is not advisable.

MR. EVANS: I would not think it is a misdirection, Dr. Innis. I would think it more likely that this is really a recital of a suggestion which was before the Cabinet when the order in council was being framed, and they wanted this Commission to report on the advisability or otherwise, and I am speaking now as to the advisability.

THE CHAIRMAN: That is, you are not impugning the possibility, is that it?

MR. EVANS: Well, I am saying there is great danger in approaching it.

THE CHAIRMAN: Yes, I know, but I mean, is it possible to do what the Order in Council asks to be done?

MR. EVANS: Oh, well, if I said "impossible" I do not mean it. It is possible and we don't object --

THE CHAIRMAN: But you think it is inadvisable?

MR. EVANS: We think it is inadvisable without some additional protection. We have no objection if the fixed charges are reduced as proposed as long as certain other things, which I am going to mention, are done; and it is impossible to say and I meant to convey this when I used the word "impossible") it is impossible to consider comparability of the fixed charges alone. You cannot consider the comparability from one angle alone; you must consider it from all angles. As a matter of fact, Mr. O'Donnell conceded it. He said that you must consider comparability from the point of view of operating conditions and so on.

In the case of the Canadian National, however, the position is very different. While no one, and least

of all the Canadian Pacific, is asking your Commission to impose upon the Canadian National a capitalization which is beyond its earning power, I submit that one must bear in mind that the Canadian National has no compulsion upon it to earn dividends on its equity securities and, therefore, in good years while surpluses may be earned, in poor years its deficits will be made good.

I think if there is one thing I do want to stress it is that word "compulsion". There is a compulsion on a privately-owned company. It must finance; it therefore must strive to pay dividends. The Canadian National, with all respect, no matter how much they strive, may find the pressures on them too great, and there is not the compulsion, there is not a threat to its ability to carry on if they don't pay dividends on their equity stock. Therefore I distinguish between the two.

COMMISSIONER INNIS: Do you anywhere state what you regard as a reasonable capitalization from your point of view?

MR. EVANS: Well, I deal with the form. I should not presume to deal with ---

COMMISSIONER INNIS: The amount?

MR. EVANS: The details and the amount. There are some clues to that in the record, and I am going to refer the Commission to them.

With the foregoing as a preliminary, one should examine the evidence in support of the Canadian National proposals by which it seeks to establish its contention that its earning power in future will not produce large surpluses over and above its reduced fixed charges. In my submission, it has not only failed to establish this as a privately owned company would have to establish it,

-- I am speaking now of reorganization -- but that it has not discharged the heavier onus which rests upon it, as a publicly owned company, to establish the extreme unlikelihood of large surpluses being earned.

The Canadian National asks this Commission in effect to make positive finding that its earning power will not enable that Company to earn fixed charges in excess of approximately $15 to $16 million and a small surplus.

Mr. Fairweather, in his evidence, did not go further than to offer his opinion in the most general terms that there was no probability of substantial surpluses. He stated that the wartime net earnings were extraordinary in character and would not be achieved in future even if traffic volume should reach wartime levels. He argued that because of the lower traffic density of the Canadian National, rate adjustments in periods of inflation would produce a lesser increase in net revenue than in the case of the Canadian Pacific.

He further argued that competition, and particularly motor competition, would be more severe in the case of the Canadian National than in the case of the Canadian Pacific. He did not at any stage attempt to forecast traffic volume.

He stated that the effect of the lower traffic density on the Canadian National would under all circumstances produce smaller surpluses for the Canadian National than for the Canadian Pacific. He contends that if traffic volume does rise so as to give the Canadian National substantial surpluses, the Canadian Pacific will have even greater surpluses. It will no doubt be argued from this that if the surpluses of the Canadian National give rise to pressure to reduce rates, the

Canadian Pacific will because of its larger surpluses be in a position to stand decreases in rates.

It is, perhaps, important before examining in more detail the traffic potentialities of the future to bear in mind what Mr. Fairweather meant when he spoke of surpluses being greater on the Canadian Pacific than in the case of the Canadian National.

At page 20343 he said:

> "What constitutes a surplus is perhaps a little debatable. What I would prefer to talk about is the amount available for fixed charges."

Thus Mr. Fairweather in asserting that Canadian Pacific surpluses in future would always be greater than the Canadian National, is talking about surpluses before fixed charges. Bearing in mind that the Canadian National recapitalization provides for only $15 or $16 million of fixed charges and a surplus for capital improvements, it will be seen that the omission of consideration of the Canadian Pacific's dividend requirements is an important omission indeed.

Even if Mr. Fairweather were right and the future held larger surpluses for the Canadian Pacific in the sense in which he uses that word, the dividend requirements of the Canadian Pacific must always, in order to produce comparability, involve net earnings of at least $20 million a year greater than that of the Canadian National.

On the other hand, Mr. Cooper in dealing with his Exhibits 276 and 277 in which he compares the position of the Canadian National with that of the Canadian Pacific in 1949 on the assumption that the recapitalization proposals are accepted and that an

increase of 20% in rates had been fully effective throughout the year, speaks of surpluses in the sense of surpluses after fixed charges. Likewise in his comparisons, the word "surplus" as used by Mr. Cooper, while not having the same meaning as is given to it by Mr. Fairweather, ignores the dividend requirements of the Canadian Pacific.

I turn now to an examination of the evidence as to the future earning power of the Canadian National.

Mr. Elliott, at page 20822 (Volume 114) stated in his evidence in chief:

> "Oppressed by the burdens of the past and by doubts as to the future there may be a present temptation to minimize the earning potential of the Canadian National Railways and to assume that it will never achieve worthwhile surplus earnings . . ."

This, he said, was a short term assumption which is "surely refuted by the growth of our population, wealth and income during the past half-century."

Mr. Norman, at page 20641, felt that there should be a "sound approach to an appraisal of earning power." He also felt (see page 20674) that the Commission did not have before it, as he put it, "any sound appraisal of the earning power of the commercial lines of that system." He said "I have not seen any forecast of it" and again in answer to Mr. Covert on the same page he stated that "we have not an appraisal of the future of Canada and the future of The Canadian National from an economic standpoint expressed in dollars."

COMMISSIONER INNIS: What does he mean by "commercial lines"?

MR. EVANS: By "commercial lines?"

COMMISSIONER INNIS: ". . . of that system", yes.

MR. EVANS: Well, I think he was talking there of his view that there could be some segregation of those lines which were commercial from those lines which perhaps were in a different category.

Mr. Fairweather, giving evidence for the Canadian National, however, agreed (page 20346 and 7, Volume 111) with Mr. Hungerford's statement in 1938, that the Canadian National had -- and these are Mr. Hungerford's words -- "far greater potentialities than its principal rival in Canada or for that matter any other railway on the continent."

On the other hand, at page 20337 he stated that he had not given consideration to the extent of the surplus or what it should be. On the same page, moreover, he was not prepared to say that at no time in the future would the Canadian National ever earn as much as $50 million surplus after fixed charges -- I use his words -- "I would not say that would be an utter impossibility".

At page 20344, Mr. Fairweather admitted that Canadian National surpluses might not be smaller than those of the Canadian Pacific if the traffic density should go to 10% higher than the Canadian Pacific.

It seems to me clear that with greater traffic potentialities than the Canadian Pacific together with the growth of Canada which all witnesses agree is substantial and likely to continue, the Canadian National should have in future a traffic density at least equal to or greater than the Canadian Pacific.

Indeed, we have a good deal of evidence which supports that view. First, an analysis of Exhibits 232 (page 10) and 218 (page 12) will show that, based on the five year averages since 1923 of revenue ton miles per mile of road, the Canadian National is gradually overtaking

its deficiencies in traffic density.

I have had prepared an analysis of the figures taken from these two exhibits.

I have included for the convenience of the Commission, the figures taken from that analysis. They are all figures taken from these two exhibits, except that we have worked averages from them. I don't know what the Commission's pleasure is there about putting that in. I think it may be worthwhile to put it in in some form, if the Commission desires it in the record, or as an exhibit.

MR. COVERT: If it could be copied right in at this stage.

Mr. Evans

COMPARISON OF REVENUE TON MILES PER MILE OF ROAD
YEARS 1923 - 1948

CANADIAN PACIFIC RAILWAY COMPANY AND CANADIAN NATIONAL RAILWAYS

SOURCE:- C.P.R. EXHIBIT 232, PAGE 10
C.N.R. EXHIBIT 218, PAGE 12

	Revenue ton Miles (millions)		Average miles of road		Revenue ton miles per mile of road		Percent C.N. revenue Ton miles per mile of road below C.P.
	C.P.R.	C.N.R.	C.P.R.	C.N.R.	C.P.R.	C.N.R.	
1923	14,567	18,615	14,617	21,805	996,575	853,703	14.3
1924	12,717	16,990	14,846	21,866	856,642	774,372	9.6
1925	13,364	18,027	15,175	21,936	880,679	818,150	7.1
1926	14,188	19,243	15,372	22,066	922,968	868,315	5.9
1927	14,870	19,465	15,600	22,193	953,189	872,402	8.5
5 year average	13,941	18,468	15,122	21,973	921,902	840,486	8.8
1928	18,423	22,588	15,819	22,277	1,164,612	1,008,634	13.4
1929	14,951	19,375	16,090	22,628	929,185	851,279	8.4
1930	12,370	16,910	16,416	23,650	753,538	711,187	5.6
1931	10,793	14,610	16,745	23,769	644,571	611,609	5.1
1932	10,067	12,818	16,888	23,773	596,129	537,138	9.9
5 year average	13,321	17,260	16,392	23,219	812,653	743,357	8.5
1933	9,353	11,550	17,030	23,743	549,211	484,397	11.8
1934	10,026	12,950	17,015	23,676	589,271	544,722	7.6
1935	10,522	13,509	17,222	23,652	610,952	568,318	7.0
1936	11,424	14,814	17,241	23,554	662,619	625,956	5.5
1937	11,602	15,165	17,223	23,707	673,663	636,718	5.5
5 year average	10,585	13,598	17,146	23,666	617,345	574,580	6.9
1938	12,135	14,505	17,186	23,684	706,095	609,720	13.6
1939	14,037	17,084	17,176	23,668	817,244	718,554	12.1
1940	16,028	21,532	17,159	23,603	934,092	908,158	2.8
1941	22,376	27,200	17,151	23,525	1,304,661	1,151,306	11.8
1942	22,600	31,729	17,077	23,494	1,323,442	1,345,174	1.6#
5 year average	17,435	22,410	17,150	23,595	1,016,618	949,777	6.6
1943	24,951	36,327	17,035	23,494	1,464,716	1,540,070	5.1#
1944	27,376	36,016	17,030	23,496	1,607,511	1,526,753	5.0
1945	27,252	34,600	17,029	23,498	1,600,283	1,472,423	8.0
1946	23,480	30,812	17,037	23,437	1,378,158	1,314,663	4.6
1947	26,202	32,945	17,035	23,402	1,538,139	1,407,799	8.5
5 year average	25,852	34,140	17,033	23,465	1,517,760	1,454,933	4.1
1948	25,218	32,943	17,033	23,401	1,480,587	1,407,783	4.9

Percent. C.N. above C.P.

NOTE: 5 year averages computed from data on statement.

THE CHAIRMAN: Are these figures liable to dispute in any way?

MR. EVANS: The figures themselves, I think not. The mathematics, straight computation of averages, I think ought to be subject to check. If there is any error it is certainly inadvertent. It is nothing but a computation of averages.

This analysis shows that for the five year period ending 1927, the traffic density of the Canadian National measured in terms of revenue ton miles per mile of road was 8.8% below that of the Canadian Pacific. In the next five years ending in 1932, the Canadian National density was 8.5% below that of the Canadian Pacific; in the five year period ending 1937 it was 6.9%; in the five year period ending 1942 it was 6.6%; and in the five year period ending 1947 it was 4.1% below that of the Canadian Pacific. In view of the fact that it has been suggested that the wartime years are perhaps an unfair basis of comparison, one may look at the figures for the year 1948 when the Canadian National traffic density was only 4.9% below that of the Canadian Pacific. Care should be taken in using the 1949 figures when the Canadian National for the first time operated the Newfoundland Railway. This, admittedly, had a marked effect upon the traffic density of the Canadian National system and is no doubt the basis upon which Mr. Fairweather suggested that the traffic density of the Canadian National is about 10% below that of the Canadian Pacific.

The improvement in the average traffic density of the Canadian National per mile of road is thus apparent over the years and this, coupled with Mr. Hungerford's statement to which Mr. Fairweather agreed, suggests the strong probability that in future this trend will be such

as to overtake the deficiency. Moreover, I suggest that it is not impossible or even improbable that the Canadian National will achieve an average traffic density in excess of that of the Canadian Pacific excluding the Newfoundland Railways which it took over in 1949.

(Page 24273 follows)

However, traffic density is not the whole story. On page 51 of the Canadian National brief is shown the average revenue per ton mile of the two systems. The average of the period 1923 to 1947 indicates that the average revenue per ton mile is more than 4% lower in the case of the Canadian Pacific. Mr. Liddy made clear at p. 17428 that low rates as well as density determined profitability of lines.

Mr. Fairweather's table at p. 20093, showing the effect of inflation upon the lines of a company having a lower average traffic density should, therefore, be scrutinized most carefully.

It is easily ascertainable from this table that the proportion of expenses variable with traffic in the case of Road A is 58% and in the case of Road B is 56%. The figure of 56% in the case of Road B is obviously the figure intended to reflect the figure for the Canadian National which Mr. Fairweather gave at p. 20235. In passing it should be noted, however, that the transcript indicates that Mr. Fairweather stated that on the Canadian National, 56% of expenses were constant and 44% variable with traffic. I think this is obviously a reversal of the two percentages, and I, therefore, am assuming that the proportion of expenses variable with traffic on Road B, i.e. 56%, corresponds with the Canadian National figures.

It is also clear from this table that the higher the proportion of the fixed or non-variable expenses used in the table, the greater will be the net effect which the table is designed to show. Correspondingly, the higher the proportion of variable expenses, the smaller will be the relative reduction in net per mile of road B as a result of the given amount of inflation.

I say that because of all the expenses were say 100 per cent with traffic you would have no difference between the two at all.

It is, therefore, important to scrutinize the variable expense ratio used in the table. This can be done by checking it against the table on p. 11 of the Canadian National brief. The last-mentioned table is designed to show the effect on the Canadian National net operating revenue of given declines in gross revenue.

I do not know whether the Commission desires to follow me in this more closely by reference to the brief, but I think it perhaps need not.

If this table is analyzed -- I am speaking of the table on page 11 of the brief of the Canadian National -- it will disclose that the proportion of expenses variable with traffic is from 72% to 75%. The Commission will note that the table itself in the footnote says that for every dollar of decline in revenue, expenses decline by 70¢. Because a proportion of expenses included in total expenses is fixed in relation to traffic volume, the ratio of variable expenses to fixed expenses in the total can be calculated approximately . It is by this process that I have derived the proportions of variable expenses used in that table, of from 72% to 75%. Bearing in mind that the table showing the effect of inflation has used 56% for Road B, and that the greater the proportion of expenses variable with traffic the smaller the effect of inflation on the net per mile of Road B, it becomes clear that if the proportion of variable expenses used in the table on p. 11 of the Biref had been used in the table on p. 20093, the decline in net of Road B as a result of the indicated inflation would be very substantially reduced.

A further point arises. The table makes clear

that the difference in traffic density as between Road A and Road B is 13-1/3%. The difference in traffic density in 1948, which was the last year prior to the taking over of the Newfoundland Railways -- as between the Canadian National and the Canadian Pacific, and 1948 was the last year prior to the taking over of the Newfoundland Railways -- was 4.9% according to the analysis to which I have just referred. Rounding this out to a difference of 5%, a re-calculation of Mr. Fairweather's table will show that Road B, instead of having a pre-inflation net per mile of $800, would have a pre-inflation net per mile of $1550. With 50% inflation, the net per mile, instead of being $325 would be $1380 and the decline as a result of inflation would have been only $170 or about 11% instead of $475, or nearly 60%, which Mr. Fairweather's table indicates.

In arriving at those figures I have taken Road B as having a traffic density of 1425 instead of 1300, that is to say, Road B would be 5% less in traffic density than Road A.

My submission is that the table put in by Mr. Fairweather to show the effect of inflation on a road of lower traffic density really exaggerates the effect it is designed to show. Undoubtedly, the effect is there to some extent but with a difference of traffic density as little as 5% and with a higher proportion of variable expenses than has been used, the result must be almost negligible.

Your Commission in that connection will recall that Mr. Fairweather, at page 20331, said -- and I quote the words he used -- "The great outstanding difference between them is their traffic density."

If anything further is needed on the subject of the proportion of operating expenses which is variable

with traffic the recent study of the Interstate Commerce Commission indicates that from 80% to 90% of all expenses are variable with traffic -- see pp. 3396-3399 of the transcript of the 20% Case (Vol. 814).

Then, too, we have other figures in the 20% Case from Mr. Gracey's evidence which indicate that 76% of expenses are variable with traffic on the Canadian National and a figure of 72% given in Senate Document No. 63 (which was a study of United States conditions earlier than the last study of the Commission) at pp. 3356 and 3361 in the 20% Case.

Second, the present traffic volume, while admittedly lower than in 1948 and one or two of the war years, is still, in terms of gross ton miles or net revenue ton miles, as you may choose, substantially (about 9%) above the average level of the years 1940 to 1946 inclusive. In those years the Canadian National, after paying even its present high level of fixed charges, was able to earn surpluses averaging more than $12,000,000 per annum. (See p. 52 - Table 10).

As Mr. Newman stated in his evidence both to your Commission and to the Board of Transport Commissioners, there is a substantial annual increase in the population of Canada. Mr. Cooper agreed that increased population tended to reflect itself in the volume of traffic requiring transportation and at p. 19030 agreed that it is not improbable that Canadian National Railways will in future have years in which the traffic volume will be as great as 1949, 1948 and the war years.

In these circumstances, it would not only be fallacious but, I suggest, even folly to think that traffic volume may not from time to time in future reach or even exceed the traffic volume of the war years. Now the

Canadian National quite fairly admits that an imbalance exists between costs and rates and that this imbalance, it hopes and believes, should be redressed. At p. 19029 Mr. Cooper admitted that but for this imabalance and the deficits of the Newfoundland Railway and the Temiscouata, the Canadian National could earn today substantially its wartime surpluses.

It was for this purpose that I introduced two exhibits, namely, Nos. 255 and 256. Exhibit 255 shows that, taking the years 1940 to 1946 and making the adjustments in fixed charges as well as providing for the income from the $300,000,000 capital fund and after deducting the full amount of the capital expenditures in those years, there would have been in the surplus fund at the end of 1946 an amount of $185,000,000.

It is to be remembered that it was in 1946 when the Railway Association of Canada made the first of its two applications for increases in freight rates. It is my submission that it would have been next to impossible for the Canadian National with a surplus fund amounting to $185,000,000 to have joined in the application for increased rates made in that year.

I am not saying that the Canadian National would do that because they wanted to hurt us; I am saying that the pressure would have been such that it would have been impossible for them even if they had wanted to do so.

Similarly, in 1948, as Exhibit 255 shows, there would have remained in the surplus fund an amount of nearly $108,000,000, even after capital expenditures in that year amounting to the large figure of $65,000,000.

It is to be remembered that in 1948 the Railway Association of Canada filed its second application for an increase in freight rates and I ask this Commission to

consider whether in these circumstances the Canadian National would have joined in the second application made in 1948. If it had not done so, the position of the Canadian Pacific would have been perilous in the extreme.

Again I want to make it clear that I do not infer that the Canadian National would have refrained because of a desire to hurt us; I am merely saying that pressure would have been on them which would have been overwhelming and would have prevented them.

Exhibit 256 shows the situation on a somewhat different basis. It is identical in every respect with Exhibit 255 save that there has been deducted from the surplus in the same years 1940-1948 one-half of the capital expenditure made in those years. Exhibit 255 had been on the bases that all would be deducted. I am not suggesting that one-half is the correct amount which should be deducted but it is clear from Mr. Cooper's evidence (see p. 19044) that not all of the capital expenditures in those years could be :: classed as non-revenue producing expenditures and therefore provided from surplus, the surplus at the end of 1946 would have amounted to $255,000,000 and at the end of 1948 to $222,000,000.

Even making allowances for the deficit which the Canadian National would have encountered from the acquisition of the Newfoundland Railway, the surplus would have been very substantial indeed at the end of these years 1946 and 1948 (i.e. see p. 19046). Using Exhibit 255, the 1946 figure would have been $161 million in the surplus instead of $185 million, and in 1948 $75.7 million instead of $107.7 million, on Exhibit 255 with all capital expenditure taken out of surplus.

As to the Newfoundland Railway, it is my submission

that the recommendation of your Commission should be that the operation of the Newfoundland Railway should be excluded from the System accounts. It can quite readily be segregated and its effect on comparisons put forward by the Canadian National is a very disturbing one.

One must bear in mind that the effect of the Newfoundland R ilways is really being used twice in the Canadian National submissions; first, it is argued as part of the justification for a reduction in its fixed charges and, second, it is put forward as indicating the improbability of the Canadian National having surplus earnings in future. It should be borne in mind that much of the case of the Canadian National is built upon this foundation. That is to say, the lower average traffic density is argued to produce a lesser net yield from rate increases. However, the maximum effect of the net earnings from the Newfoundland Railways can never be more than the deficit on that railway which at the present time is estimated to be about $4,000,000 per annum.

In my submission, whether or not the Newfoundland R ilways are to be segregated from the rest of the System, they should be so segregated for the matter of determining earning power for rate- making purposes.

With regard to the effect of motor competition, it was asserted by the Canadian National (see Fairweather p. 20359) that the principal reason is that the Canadian National is preeminent in Central Canada where motor competition is greatest. However, as Mr. Fairweather admitted, the Canadian Pacific is likely in future to meet increased motor competition in Western Canada where it at the moment is preeminent.

As a further matter, Mr. Fairweather at p. 20344 (Vol. 111) admitted that if the traffic density of the

Canadian National should go to 10% higher than that of the Canadian Pacific he would not then assert that the Canadian National surpluses would always be smaller than those of the Canadian Pacific. As he put it - "Oh certainly not, if we should by some inconceivable condition overcome that handicap, I would expect that the Canadian National operating results would reflect it."

He went on, of course, to protect his answer by giving his view that his study over the years did not indicate any probability of that happening and went on to point out that the Canadian National had "a job of work.....in future of adding to the development of this country by extending lines and that will dilute our traffic density."

Perhaps I should point out that the analysis indicates that in the years of the twenties, which was probably the most tremendous recent building of railway lines in this country by both railways, the average traffic density showed an increase over what it had been previously, and I imagine that has been true of both railways. That is as to the point of new lines diluting traffic density.

THE CHAIRMAN: What period of time are you referring to?

MR EVANS: In the twenties. Mr. Fairweather has been saying, in the future we are going to have to build new lines, development lines, and that will dilute our traffic density. I merely point out that, while that may be true in the initial stages of construction of branch lines, the period of the twenties, which was a tremendous, and even extravagant, period of building branch lines by both roads, there was an increase in the average traffic density in those five-year periods.

I pause merely to point out that if the Canadian National has a job of work in extending development lines, so has the Canadian Pacific and I also point out that the Canadian National has been at pains to suggest that its future development lines should only be undertaken if they can show a reasonable prospect of paying their way.

To sum up all of this evidence on behalf of the proposals I suggest to this Commission that one of the most important reasons that could be presented in support of the Canadian National proposals, namely, its earning power in future years, has been passed over in the same general terms and that your Commission would be quite unable to make such an important finding as the necessity requires. Your Commission will, I trust, not misunderstand the purpose of this argument. All I am saying is that if one could be sure that the earning power of the Canadian National would never improve in future the Canadian Pacific would have no reason for being concerned. What the Canadian Pacific fears is that the tendency to minimize the earning power of the Canadian National, as Mr. Elliott put it, would be accepted as the assurance which the Canadian Pacific needs to protect it against the consequences of the recapitalization proposals.

Mr. Northey Jones foresees an increased volume of business in the 1950's as compared with the past (see p. 20441 - Vol. 112; see also p. 20596 where he speaks of the expanding economy, in Canada and at p. 20598 where he says the expansion in Canada will be greater than in the United States.)

It will be remembered that Mr. Northey Jones is an investment banker, and his firm at least, and certainly he himself, has more experience perhaps in railway financing

than anyone I ever heard of.

Mr. Norman sees a trend (p. 20620) towards "economic expansion rather than stagnation or retrogression" and at p. 20642 he stated that "we should not lose sight of the longer range estimates of growth in population and economic development in Canada....I am an optimist....I expect the volume of production and therefore the transportation demands to reach much higher levels in the years ahead."

This does not argue that in every future year the traffic volume will exceed the present or the immediate past but it does indicate an extreme probability of increasing traffic volume on the average over the years in future. I, therefore, argue with some assurance that the possibility and even the probability of substantial surpluses for the Canadian National after the proposed readjustment of its capital structure is something with your Commission is faced.

One can, however, get a pretty clear picture of the position of the Canadian National under present traffic levels by an examination of Mr. Norman's Sheets 1 and 2 (pp. 20637 & 8) and of Exhibits 276 and 277 put in by Mr. Cooper.

You will recall that Mr. Cooper's exhibits were an attempt by him to suggest that Mr. Norman's two tables were in error, and you will recall how readily those exhibits of Mr. Cooper's were reconcilable with Mr. Norman's tables, and that they had to do with the matter of the income tax which was shown on Mr. Cooper's exhibits and also the omission of the requirement of the Canadian Pacific for dividends.

I suggest in view of the cross-examination of Mr. Cooper that Mr. Norman's Sheets 1 and 2 stand as a fair

and reasonably accurate view of what may well happen in future. These comparisons show that with a 20% increase in rates in effect throughout 1949, the Canadian National would have had a surplus of $28 million, whereas the Canadian Pacific, even on the Board's formula which disallowed certain items of expense, would have had only $14 million. When one bears in mind that for nine months of 1949 the Canadian National had operated the Newfoundland R ilways and that it had extraordinary charges for premium on bonds called for redemption, one has a little difficulty understanding how the Canadian National can be pessimistic about the possibility of surplus. With all respect, I do think they are extremely pessimistic.

I pause merely to point out to the Commission that on the basis of Mr. Norman's tables, which show that in 1949 after these adjustments, and giving effect for the 20 per cent increase in rates which has recently been authorized, the operating ratio would be 88.5, and the Commission will recall that Mr. O'Donnell in attacking Mr. Northey Jones' evidence as to the possible earning power of the Canadian National thought that his assumption of an operating ratio of 90 per cent was very unrealistic; and this indicates that on their figures for 1949, after these readjustments, and even though they had the Newfoundland Railways for nine months of the year, their operating ratio would have been 88.5, even lower than Mr. Jones thought was a reasonable mark to shoot at.

Now, if I may delay for a moment with a table put in by Mr. O'Donnell for the year 1950, a forecast, that table was put in by Mr. O'Donnell at p. 24082, and the Commission will recall that I felt that it was objectionable because it was not proved and also because it had to do with results in the year 1950, in regard to which the

recent increases did not pretend to restore the imbalance as between costs and rates. The Board's judgment was based entirely on the results for 1949.

Without having had too much time to analyze it, there are two observations I want to make about that table. The page is 24082 in volume 135.

The first item I do not propose to spend much time on, if your lordship and the Commission will look at the item:

"Elimination of special credit from
Deferred Maintenance Reserve
(non-recurring) $9,000,000."

Now, that is added to the deficit, which begins at the top of the page, their budget deficit of $32,000,000, and therefore it is assumed that the deficit of $32,000,000 had taken into account a budget for maintenance expenditure after allowing for the withdrawal from the defereed maintenance fund of $9,000,000. That assumes that when one withdraws a sum of money from the deferred maintenance fund one is doing more than one normally would do in maintenance, and that one is restoring the deficiencies of the past, and they are therefore asking the deferred maintenance fund to pay for the restoration of the deficiencies, because the deficiencies were to some extent at least taken care of by accruals to the fund in the years in which the maintenance could not be done owing to the war. So that actually the restoration of the $9,000,000 item as an addition to the deficit has resulted in the deficit figure at the bottom becoming $122,000, whereas that $9,000,000 if it had been treated as I submit it should have been treated would have shown that at 1950 there would have been a surplus of nearly $8,900,000 instead of a deficit of $122,000. That is the first point I want to

make about that table.

The other is perhaps a little more complicated. I have had a quick survey made of the budget put in by the Canadian National before the House of Commons Committee from which the figure at the top of that table is derived, that $32,236,000. I have also looked at the proceedings before the Sessional Committee on Railways and Shipping, and I think my friends will bear out my analysis, that that deficit is based on estimates of revenues and expenses for the year 1950. Now, I am not dealing at all with the propriety of their estimates of revenues; certainly they can be out or they can be accurate; it is quite possible. But there is something about the estimate of expenses that I merely draw attention to as indicating that there may be a tendency perhaps to minimize the surplus possibilities.

THE CHAIRMAN: It is going to take some time?

MR EVANS: It will take a few minutes, yes.

THE CHAIRMAN: Then we had better adjourn now.

---The Commission adjourned at 1:00 p.m., to meet again at 2:45 p.m.

Ottawa, Ontario,
Monday, May 29, 1950.

AFTERNOON SESSION

MR EVANS: At the adjournment I had been speaking to the statement put in by Mr. O'Donnell with regard to the estimated results for the year 1950. I had dealt with the item of $9,000,000 of deferred maintenance, and I was about to deal with a second item which arises from the budget estimate of revenue and expenses, with particular emphasis on the question of expenses.

The budget, which is Exhibit 289, does not, at least in the copy I have, break down the budget estimate of revenues and expenses, but the report of the proceedings of the committee does assist a little in understanding what is involved. I hope my friends will correct me if I am wrong in assessing what that shows, but as I understand it it involves this, that the revenues are expected to be increased in 1950 over the previous year by an amount of $26,000,000.

The reference to that will be found in Mr. Gordon's statement before the Committee, at page 182 of the proceedings. Perhaps I could read that into the record:

"Let me put it this way: we expect by reason of increased rates a total of $26,000,000, but we expect a traffic decline which would affect our earnings minus to about $12,000,000, and that comes off to figure of" -- I suppose he means "to a figure of" -- "roughly $14,000,000 increase; and if we enjoy the same volume of freight movement in Newfoundland and we add another $2,000,000 to get the total increase of $16,000,000. And there, may I point out, that our figure with respect to last year deals with only nine

months of operation in Newfoundland whereas this year we are considering operations for the full period of twelve months."

Now, my reading of that is simply this, that revenue increases due to increases in rates are expected to add $26,000,000 to the revenues for the year 1950, and that because the revenues of the Newfoundland Railways are reflected for only nine months in 1949, the effect on the revenues in 1950 will be about one third of the revenues received from the Newfoundland Railway in that period of nine months, and they will add $2,000,000, leaving a total of $28,000,000 of increased revenues due to increases in rates and to the inclusion of the Newfoundland Railway for a further period of three months.

Now I get the second point from that, that the traffic volume will decline by an amount representing revenues of $12,000,000. That figure of $12,000,000 is rather important when one comes to consider the budget figure of expenses.

Before I mention the budget figure of expenses I perhaps should point out that in arriving at the first figure on the table introduced by Mr. O'Donnell the matter of deferred maintenance had already been taken care of, and that the deficit of $32,236,000 is on the assumption that deferred maintenance has been drawn down to the fund to the extent of the $9,000,000. Having regard to the fact that there is a traffic decline of about $12,000,000 in volume, we find that the budget budgets for an increase of almost $4,000,000 exactly in expenses.

Now, normally -- and I am not quarrelling with my friends about this; I am just pointing it out -- normally if you had a decline in traffic volume the equivalent of

$12,000,000, and using even a 70 per cent figure, indicating a decline of 70¢ in expenses for each dollar of revenue decline, which they used on page 11 of their brief, you would find that expenses might in those circumstances normally be decreasing by $8,400,000. Instead of that, the Canadian National has budgeted for an increase of $4,000,000 in expenses. Now, the swing of those two items amounts to $12,400,000. If that $12,400,000 were taken into account, then the deficit would, instead of being $32,236,000, be of the order of $20,000,000.

THE CHAIRMAN: How much?

MR EVANS: $20,000,000. The only reason I mention that is not to say that my friends are extravagant in maintenance, but to point out that it may be one of two things. It may be increased costs. On the face of it, of course, it does not include any anticipated increase in wages, but it may be increased material costs, and if it is increased material costs then it is imbalance. That is my point about it. If it is due to imbalance, then my point about the rejection of the statement was sound, on the ground that you cannot, by applying something to a year in which imbalance exists, measure the effect of something which was in turn a measure of imbalance in the previous year; and therefore I suggest that one must or should, without some further explanation, reject this statement as an indication of what the true results of the Canadian National will be on a restoration of imbalance. I am not saying that the estimates are wrong; I am merely saying that it is not a fair test of the earning power of the Canadian National, having regard to the possibility of imbalance still existing, and also having regard to the treatment of deferred maintenance. That is all I have to say about that.

Perhaps I should give the Commission the page reference to the exhibit, the budget which I used for showing the increase in operating expenses. It is revised page 2. The original budget as put in, I believe, has been revised, and I have the old page 2 and the revised page 2, but I think the difference in expenses is almost identical in both cases.

THE CHAIRMAN: Revised page 2 of what?

MR EVANS: Of Exhibit 289.

Then if I may turn again to my notes---

THE CHAIRMAN: You say revised page 2 of Exhibit 289?

MR EVANS: Yes. That shows in three columns, my lord -- it is not the statement, my lord; it is the Exhibit 289 which was filed as an exhibit. It is the budget, and the budget, my lord, is the foundation for the first item on the statement which was copied into the record. That deficit item which begins the statement, $32,236,000, is the end figure of the budget on revised page 2, which shows---

THE CHAIRMAN: Revised page 2 of what?

MR EVANS: Of Exhibit 289.

THE CHAIRMAN: What Exhibit 289?

MR EVANS: The Exhibit 289 in this proceeding.

(Page 24290 follows)

THE CHAIRMAN: Yes, but the Exhibit 289 here is only one sheet.

MR. EVANS: No, sir, I think you will find that when that was put in that was copied into the record and was not given an Exhibit number, and the budget was put in as 289.

THE CHAIRMAN: The Exhibit number is printed on it. Yes, I see.

MR. EVANS: You will find that the end figure on the revised page 2 opposite "deficit over the year 1950", the outside column is the beginning figure of the statement which you had marked 289 which was subsequently not marked as an Exhibit but copied into the record, and it is from that figure there are derived the subsequent calculations which produce the deficit figure of $122,000. You see 1949 actual figures of expenses, my lord?

THE CHAIRMAN: Yes.

MR. EVANS: There is a difference between that and the 1950 budget, an increase of $4 million, and I have been arguing that they are budgeting for a decrease in volume of expenses which, measured in terms of the factors they used in the other table on page 11 of their Brief, would indicate that one might expect instead of an increase in expenses, a decrease of $8.4 million, a swing of $12.4 million.

It remains to consider what might be the effect on the Canadian Pacific if these matters came about and what can be done to prevent such an effect.

The <u>first</u> effect on the Canadian Pacific is that although the Canadian National does not ask to be the yardstick the pressure of public opinion might produce that result, Mr. Northey Jones at p. 20446 stated that:-

"There is a serious question whether the

Canadian Pacific could remain the standard if the Canadian National were granted the relief it has requested and is not required to use earnings over and above its fixed charges to pay a return on its equity capital."

At p. 20447 he said it was "hard to believe that there would not be a strong demand from many people for lower rates or even a demand that the Canadian Pacific no longer remain the yardstick."

On the following page he said it was not unthinkable that the Canadian National might have a net of $75 million but if, on the other hand, the net is low, the Canadian Pacific might have to request increases in rates and the Canadian National might not go along if it were earning sufficient for its fixed charges.

At p. 20450 he gave it as his firm opinion that whether or not the Canadian Pacific or the Canadian National or both became the yardstick in rate cases, Canadian National's earnings after reduced fixed charges would have a material effect in the fixing of the rate level. He further gave his opinion that in such an event the Canadian Pacific "would be put in a disastrous position and great disservice would result to the people of Canada."

THE CHAIRMAN: Have you anywhere in mind some other incentive that might be put upon the Canadian National in the event of all this prosperity which would induce them to go along asking for rate increases?

MR. EVANS: Yes, I have, my lord. I am going to make that suggestion.

THE CHAIRMAN: All right.

MR. EVANS: At p. 20490 he stated that if the Canadian National had earnings after fixed charges of $50 million "quite a reaction about why should these rates be so high" might ensue.

At p. 20500 he stated that there would be pressure to make the Canadian National the yardstick if they have what he called an "appreciable surplus."

At p. 20504 he thought that the Canadian National might not go along on an application for an increase if it had sufficient to pay its fixed charges.

At p. 20518 he said that he was worried even if the surplus got down to a minimum figure because in that event the Canadian National might not go along with the Canadian Pacific for an increase which it needed to earn its requirements.

Mr. Norman likewise at p. 20626 thought that a large part of the public would use any comparisons which are favourable as a yardstick to call for a reduction or to oppose an application for an increase in rates.

At p. 20633 he made a similar statement.

At p. 20681 Mr. Norman stated that the problem boiled down to the possibility of a surplus for the Canadian National which "may bring pressure on rates."

Mr. Frawley in his cross-examination of Mr. Northey Jones (see pp, 20562, 20562a, 20569, 20579-80, and 20583-4) pointed up exactly the fear which the Canadian Pacific has expressed when he said:-

> "It is not at all unreasonable to suppose if freight rates were to be fixed on the basis of the needs of the Canadian National, that they could indeed be substantially lower than rates based on the needs of the Canadian Pacific."

In his cross-examination of Mr. Elliott, Mr. Frawley asked him (p. 20862-3) --

> "At what cost to the people of Canada must the Canadian Pacific be kept the measure or guide."

and he was concerned to know what concession the Canadian Pacific was prepared to make in order to have the protection it needs.

While Mr. Frawley admitted (p. 20863) that the Canadian Pacific must obviously be kept from bankruptcy he seems to think that out of its fair return it should pay something for the privilege of obtaining a fair return. That is to say, if the return is fair it should be reduced to less than what is fair in order to ensure that its return will be fair. These statements make it quite clear when coupled with the statements made in the Canadian National brief at pp. 38 and 39 that everyone recognizes the possibility of pressure being brought to bear in the event of Canadian National surpluses to have rates reduced below what may be necessary for the Canadian Pacific.

Perhaps the most impressive argument on this point is available in the answer given by Mr. O'Donnell to Dr. Angus at pp. 20289-90 where Dr. Angus asked on what principle the Canadian National acts in deciding whether or not to support the C.P.R. in an application for an increase in rates. Mr. O'Donnell's answer was "I think it looks to its own requirements." If requirements are to be reduced by the proposed recapitalization, one assumes that these reduced requirements would determine the policy of that Company.

In my submission it is a very real possibility and unless your Commission is prepared to risk the financial integrity of the Canadian Pacific, it must be taken into very serious consideration.

A further statement by Mr. O'Donnell perhaps points up the position of the Canadian Pacific better than anything that I could say. That is his statement at p. 23800 that Mr. Northey Jones' evidence as to the necessary earning power of the Canadian Pacific is "so out of realism that we cannot see it at all".

Although it is counsel's function, if he challenges the evidence of a witness, at least to cross-examine him upon that evidence or to produce some evidence to refute it, Mr. O'Donnell argues to your Commission without any evidence whatever to support him, that Mr. Northey Jones is unrealistic when he offers his view as to the necessary earning power of the Canadian Pacific. Thus Canadian National rejects the evidence of an acknowledged expert in an attempt to minimize the matter of earning power as an element in its recapitalization proposals.

Canadian National is suggesting that the limit has been reached in the increase in rates. It is suggesting that what Mr. Northey Jones, as an independent expert, says is required is not in fact required to support the position of the Canadian Pacific.

Thus, in order to save its own recapitalization proposals, Canadian National is prepared, in effect, to argue that there is no hope for the Canadian Pacific meeting its needs as measured by Mr. Northey Jones' evidence. In the light of this attitude, is there much doubt as to the Canadian National's position if their fixed charges are reduced, when a further increase in rates may be required?

Nothing, in my submission, could more clearly point to the danger of the position of the Canadian Pacific. I would have thought that the Canadian National would take the position, as its Brief implies, that there is

still an imbalance as between rates and costs. Instead it argues that the increases have about reached the limit and that Canadian Pacific is unrealistic in thinking that it is still below the level of proper earning power for its railway operations.

Canadian National says that it wants to be in a comparable position with a commercial organization. We would be delighted to have them in a comparable position in all respects.

It will not do to have them comparable merely on the basis of fixed charges. In order to be comparable they should be put in a position where at least they have the incentive to earn a comparable net income with the Canadian Pacific. It is the Canadian National's failure to recognize this as a fundamental position of the Canadian Pacific that gives rise to our fear.

It would, of course, be different if the Canadian Pacific were over-capitalized. No one has ever suggested that. The Canadian Pacific has only maintained its credit because of its high level of Other Income and its undoubted efficiency. While Other Income is not taken into account directly in fixing rates, it undoubtedly has a marked effect on the Company's credit position which would otherwise, under present circumstances, be at a very low ebb.

THE CHAIRMAN: I notice you say: "While Other Income is not taken into account directly in fixing rates....". What is your reservation there?

MR. EVANS: For example, we were recently able to finance an issue of $20 million of collateral trust bonds at what was a very considerable reduction in average interest rate for these bonds, and that only because our credit has been maintained at a higher level

than railway operations in themselves would permit. The Other Income last year was in excess of the net earnings from the railway, and yet Other Income represents an investment of only a fraction of what the railway properties represent. So I say that although not directly taken into account, it is reflected indirectly in the requirements of the Canadian Pacific and in its credit, because those reduced fixed charges are reflected in the Board's judgment as to the amount of the increase.

So long as the Canadian Pacific has to rely on its own resources it cannot be in as favourable a position as the Canadian National, relying on the resources of the Dominion Government. It is one thing to talk of comparability of the level of fixed charges, but in my submission it is idle to talk of that kind of comparability without also considering other aspects of comparability.

In effect, Canadian National is arguing that the present earning power of the Canadian Pacific Railway cannot improve to the level which Mr. Northey Jones suggests and, having reached that point in its reasoning, it argues that the Canadian National also can never improve and therefore it requires relief. All that I can say about that is, if the Canadian Pacific cannot improve its present earning power it cannot survive as a privately owned system. It therefore follows that so long as one believes that the Canadian Pacific has a possibility of surviving, one cannot assume that the earning power of the Canadian National will not also improve.

Your Commission will, I am sure, be struck by the fact that although the railways have received in recent cases substantial increases, the Canadian Pacific during the past three years has failed to earn what the Board has held it entitled to earn by at least $80,000,000 (Ex. 285),

I may point to this, that if the Commission desires it, they can find on record with the Bureau of Statistics the results so far this year, and they will find that despite an increase in rates that went into effect on March 23, of 16% in lieu of the previous increase of 8%, the gross earnings are only fractionally above a similar period of last year. Net earnings have shown some improvement, but only a small amount.

THE CHAIRMAN: This $80 million you say, is that the same $80 million that Mr. Carson referred to?

MR. EVANS: Yes, sir.

THE CHAIRMAN: Lost by delay?

MR. EVANS: Lost by delay, but we are always behind, my lord. My point is that we have now got relief based on earlier requirements. We are now heading into a period where our gross revenue is only very very slightly up despite the increases in rates, and we are facing an increase in wages.

- - yet in arguing for its recapitalization proposals the Canadian National is applying its results in these years as if the balance had been restored. I think that is perhaps important because the average deficit figure they have been using has been including these years during which the Canadian Pacific, despite the increases which took place, was behind even the permissible level of earnings by a total of $80 million. It (and I mean the Canadian National) is using figures of deficits of recent years as indicative of future results.

A further effect on the Canadian Pacific of the Canadian National proposals is the probability that the proposals in themselves provide an unfair competitive position for the Canadian Pacific. Your Commission will have in mind the fears expressed in the Drayton-Acworth Report which were referred to in evidence by

both Mr. Walker and Mr. Norman. Certainly the Drayton-Acworth Commission was impressed by the need for bearing in mind the difficulties of a privately owned company competing with a publicly owned company. It was undoubtedly for this reason that the Drayton-Acworth Commission at p. 72 (and I have already given the Commission a reference to that) made it quite clear that in its view (see p. 20612) it is the duty of the Trustees of the newly formed railway system to "operate their system as a commercial concern, and to make no general reduction in rates, unless ordered so to do by the Railway Commission, until interest at a reasonable rate was earned on the whole capital value....of the undertaking."

A still further effect on the Canadian Pacific is the provision of a very large sum ($300 million) as a capital fund which can be drawn upon by the Canadian National in future for capital purposes. It is true that our friends in the Canadian National have taken the position that any sum so drawn down must be approved by Parliament in the annual budget of the Canadian National. One might venture to indicate the view that such a limitation is inconsistent with an acknowledgment of indebtedness and to wonder why in such an event it is necessary to establish such a fund at all. However, assuming that Parliament would authorize annual appropriations, all that Parliament would be expected to do would be to vote these amounts when applied for if it felt that the sums applied for were reasonable. No one would, I think, be so bold as to suggest that Parliament would refuse to vote such sums for capital expenditures on the Canadian National merely on representations that the Canadian Pacific at that particular moment found itself unable to raise necessary capital for the improvement of

its own system. Yet this, indeed, might well be the case in periods of low earnings for the Canadian Pacific. As a matter of interest in that connection, I would like to refer again to the Duff Report, where at page50 there is a section entitled "Political and Public Pressure". It begins with paragraph 142 and it proceeds to paragraph 154. The Commission will note particularly at page 52 a paragraph showing the capital expenditures authorized by Parliament during the fiscal year 1929 to 1930. I am not going to read the paragraphs, but I think it is a fair commentary on those paragraphs, that if there is one thing that is apparent from the recital and the findings there made by the Commission, it is that Parliament is rather inclined to approve quite readily the recommendations made to it by the Railway Company, and certainly if the fund had previously been established as a debt owing to the railway, I cannot conceive of any rejections by Parliament of the right of the railway company to use that fund.

Thus the provision of a large capital sum nearly equal in amount to the outstanding ordinary stock of the Canadian Pacific provides means by which the Canadian National could, if it chose, be put in an extremely favourable competitive position as compared with the Canadian Pacific. In periods during which the Canadian Pacific could not obtain capital monies because of its low earning power, the Canadian National could always have access to almost unlimited sums.

In that connection for example, I might point to this. I am not suggesting it would be wrong for the Canadian National to spend money on modernization, but in periods of low earnings a privately-owned company has to be able to go out and borrow its money or sell stock

and raise money in that way. Now then, the Canadian National, by the use of that fund, could, (I am not saying they would but I am saying they could) go out and dieselize their whole system with the attendant savings that could be achieved, and the Canadian Pacific, with its limited means, would have to work this thing out by a piecemeal application, we will say, of diesel power and the savings that result from it. It is only an indication of the competitive advantage which the almost inexhaustible resources of the Dominion Government being placed at the disposal of the Canadian National, provide.

THE CHAIRMAN: Well, could not the Dominion Government, or rather Parliament, authorize expenditures such as those you refer to?

MR. EVANS: I think they could. What I am pointing out is that the thing is more or less crystallized. They set this credit up of the Canadian National, and it is a debt owing to the Canadian National upon which interest is paid. It seems to me that having once had that set up, the control by Parliament in future, although they would seek Parliament's approval of their budget, would be almost cursory, because it is a debt owing to the Canadian National which they are entitled to have paid. They certainly could, they could prevail on Parliament year by year to do this, but it does seem to me that there is quite a difference between setting it up as a debt in the first instance and voting such requirements each year.

Indeed, Mr. Norman not only described the provision for the establishment of such a fund as a "hidden subsidy" (p. 20744-20749 inclusive) but he also (at pp. 20634-5) pointed out that the Canadian Pacific in the face of these provisions "would be forced either to increase its funded debt to enable it to keep in a

competitive position, or otherwise fall behind in the race."

Now, you see, if the Canadian Pacific in those circumstances had to increase its debt in a competitive effort to meet the improvements which this fund would provide, it must be borne in mind that all that the Canadian National would be giving to the Government for that debt is an equivalent amount of equity stock which they are under no compulsion to service by dividends. In our case we are not able, under present conditions, to finance by equity stock, so that our only alternative in that circumstance would be to finance through increasing our fixed charges.

He concluded that the desirability of having two competing enterprises, one publicly and the other privately owned, would in his opinion be "completely undermined by the adoption of the drastic subsidy proposals submitted by the Canadian National."

I have thus shown that there is a substantial threat to the Canadian Pacific if the recapitalization proposals are accepted in their present form. I have, I think, adequately demonstrated that these proposals are predicated upon generalized assumptions of earning power in future for the Canadian National. I suggest most seriously that the forecast of earning power is most inadequately dealt with in the Canadian National submission. One would not be inclined to doubt the ability of the Canadian National officers, if they set their minds to it, to make adequate estimates of that company's earning power in future. They have not, however, made any such forecast. They admitted that there is a trend towards growth in population and they admitted that there is a possibility of the Canadian National

having large earning power in future. They admit that this earning power has greater potentialities than that of the Canadian Pacific but they feel that for some reasnn the position of the Canadian National will at all events deteriorate rather than improve in the future. It is upon this slim evidence in the face of that of Mr. Newman, Mr. Norman, Mr. Jones and Mr. Elliott that your Commission is asked to deal with this extremely important matter which, while offering only the advantage to the Canadian National that the morale of its officers and employees would be improved, contains such substantial threats to the financial integrity of the Canadian Pacific.

I would, I think, be quite justified in asking your Commission on these grounds alone to reject the Canadian National proposals. I do not, however, do so. Despite the suggestion that Canadian Pacific is unduly worried, one must really weigh the advantages on the one hand with the harm which the Canadian Pacific fears on the other.

How then can the advantage of the recapitalization and of improved morale be obtained by the Canadian National while preventing harm to the Canadian Pacific? That is the sole question which I ask your Commission to deal with, and in my submission the answer to it is comparatively simple.

Canadian Pacific has put fowward as a proposal a draft amendment to Section 325 of the Railway Act. I suggest that this amendment is desirable and indeed necessary. It does no harm to the Canadian National and it does no harm to any freight shipper in this country. It does guarantee to the Canadian Pacific

by statute that rates must be such, taken as a whole, as to permit the Canadian Pacific to earn a fair return on a reasonable level of its property investment. Your Commission will note that it will be for the Board both to establish the investment base on which the rate is to be calculated as well as the rate of return itself. I should, perhaps, say in passing that your lordship indicated that he felt this proposal was a double-barrelled one. That is true. It provides for a fair return on the investment of the Canadian Pacific as found by the Board as well as providing specifically for the protection of the Canadian Pacific from the result of the Canadian National proposals.

However, the double-barrelled provision is necessary because although I have always taken the position that the Board is free to use the return on investment as a basis for making rates, it should in the light of the difficulty which has been experienced in recent rate cases, be made clear by statute that this is the basis to be adopted by the Board. As Mr. Norman put it in his evidence at p. 20718-9 requirements would rise and fall depending upon the amount of funded debt from time to time outstanding. He pointed to the fact that one enterprise could have a large amount of funded debt and a small amount of stock and another enterprise with practically no funded debt and a large amount of stock. These would vary from day to day, from week to week and from month to month and in consequence there would be no real stability in the permissible earning power of a railway company or in the level of freight rates. In these circumstances I am strongly proposing to your Commission that this amendment is necessary and should be recommended. (Page 24306 follows)

There is a further measure which can guarantee to the Canadian National a relief from a high level of fixed charges and the consequent recurring deficits while giving protection to the Canadian Pacific. It is by the use of income bonds. Mr. Norman at p. 20642-3 suggested that the device of income bonds be used to the extent of $391 million to replace fixed interest debt.

I want to make it clear to the Commission that I consider both those measures necessary.

Mr. Northey Jones (p. 20564 - Vol. 113) said in cross-examination -- "not that I should make suggestions, maybe, as to what you should do here" but that a provision could be made for the issue of "some income bonds and for a capital fund." The provision for the capital fund would rank prior to the provision for interest on such income bonds.

Mr. Elliott made a similar suggestion. At page 20820 he said that instead of having the Government accept equity capital in exchange for its present interest-bearing obligations of the C.N.R.,

> " . . . . . the exchange of whatever justifiable part of $760 million of government-held obligations for equity of another form might be contemplated."

The provision for income bonds as compared with the substitution of equity stock for fixed interest bonds would be no hardship on the Canadian National. I well realize that their preference would be for something in the nature of equity and if it were not for the necessity of protecting the Canadian Pacific one could be quite sympathetic with that view. However, the provision for income bonds would eliminate the necessity for annual deficits to the extent of the income bond interest requirements while ensuring that if the interest was earned

it would be paid. The protection afforded by this device is simply this -- that it could not be argued that rates should be reduced at least until the interest had been earned on the income bonds outstanding. This would tend to eliminate pressure to have rates reduced to a level which does not pay to the Government some return on the capital invested.

THE CHAIRMAN: This is your answer to my question, then?

MR EVANS: Yes, sir.

It scarcely seems possible to contemplate that a property of the size of the Canadian National with gross earnings of $500 million a year should not earn at least $50 million and possibly more in good years after operating expenses. The present level of fixed charges is in the neighborhood of $46 million. A 90% operating ratio, as Mr. Jones pointed out, would enable the Canadian National to meet these fixed charges with that level of gross earnings. Any appraisal of the situation which does not take into account the possibility of this earning power is an unrealistic one. If there is to be comparability between the Canadian National and the Canadian Pacific as to the burden of fixed charges, there should also be added to Canadian National requirements for rate-making purposes the equivalent of the dividend which the Canadian Pacific must include in its requirements. The only way this can be achieved and guaranteed is by the use of some such device as income bonds. That this is customarily used in reorganizations of private railway companies in the United States is in itself a strong argument for using it in the case of the Canadian National.

I think I should point out that Mr. Cooper at two places in his evidence (p. 18701 and p. 18813-4) indicated

that the proposals were not made with any idea in mind of the possible effect on the Canadian Pacific.

Quite obviously the only protection to which the Canadian Pacific is entitled is that there should be some way of ensuring that the Canadian National be free to earn a reasonable return for the owners of its equity capital.

The amount of the equity capital after giving effect to the recapitalization will be about $1800 million. There is no way of estimating, on the matter before us, what that return should be. I assume that in the last analysis the matter would require study and probably a determination by the Board.

It is, however, perhaps useful to speculate. Mr. Cooper himself at p. 18926, while not pressed to be specific on the point, thought it should be at least -- I am speaking now of the return -- 1½% or even higher on the whole amount of equity capital, i.e. $1800 million.

I pause there to point out that it should be higher than 1½ per cent. 1½ per cent or even higher, is the way Mr. Cooper put it. Taking it at 2 per cent on $1.8 billion, that would be $36 million of earning on equity capital. Now, $36 million added to $16 million, the fixed charges, makes $52 million, and a surplus of $15 million would make it $67 million, so that on Mr. Cooper's rather -- I was going to say guarded, but at least quite frank indication, and without holding him to a specific figure, it would appear that the earning power of the Canadian National, permissible earning power, might be expected to be something in the neighbourhood of $67 million.

At pp. 18927-8 Mr. Cooper stated that if a rate of return was to be calculated, he felt that the special considerations affecting the Canadian National's position

should be arrived at by adjusting the investment base upon which a return should be earned rather than that the rate of return in itself should reflect the adjustment. At p. 18933 he felt that this adjustment would have to be taken care of by setting aside as not entitled to a return "a substantial amount of the investment as recorded in the ledgers." He then said, on the same page, that the resulting reduced investment base should be entitled to a return "on a comparable basis with your Canadian Pacific Railway."

Now, I am just speculating, but, just to indicate where that might lead us, and using Mr. Northey Jones at roughly a 6½ per cent return, and reducing the railway investment of the Canadian National to something less than a half of its present level, taking it at a billion dollars, it is almost inconceivable that these adjustments could result in an investment base lower than a billion dollars, even with depreciation deducted.

COMMISSIONER INNIS: Did you say slightly less or slightly more than a half?

MR EVANS: Well, it is slightly less than a half gross; if there were depreciation deducted it is probably about half of the investment.

Now, if you were to take 6½ per cent return, which Mr. Northey Jones approximately uses, that would be $65 million on a billion dollars. That is cutting out approximately half of the C.N.R.'s investment.

Now, whether you take it the one way or the other, it looks to me, with respect, that the earning power of the Canadian National ought to be -- I do not say it always will be, but it ought to be -- contemplated as something of the order of $65 to $67 million.

One of the things that may have its effect in this

connection was a statement by Mr. Fairweather; I have not got a reference to it at the moment, but I am sure you will correct me if I am wrong. He had in mind on this deficit question and the difficulties of the C nadian National that there were approximately 2,500 or 2,700 miles of railway that were of very low traffic density, and he felt that that was in some measure an indication of the disability under which the Canadian National suffered. Well, all I am pointing out there is that if you took 5,000 miles at higher than the average cost of construction -- because the average cost of construction in the Canadian National brief is about $88,000, as I recall it -- take 5,000 miles at $100,000 per mile, and you would have only $500 million, and if you took that off the investment you would still have more than a net investment of a billion dollars for the Canadian National. I am only speculating to show that I am not just dreaming this up. I think this Commission might very well take a look at it itself, in view of Mr. Cooper's evidence and in view of Mr. Northey Jones' evidence, and see whether it is not reasonable to expect that this property of the Canadian National might earn of the order of $65 to $67 million.

Mr. Cooper was then asked -- "In what way do you suggest that the proposal as put forward by the Canadian National would provide for that return?"

His answer to that question at p. 18934 is important:-

> "A. I do not think it is implicit in that proposal that there is in contemplation the determination of a rate of return on the equity capital."

Later on p. 18934 he said:-

> "I am saying we have not given our thinking to it, and if you press me on these things all I can say is that

I have not studied it, . . ."

However, I ventured to make certain suggestions to Mr. Cooper in my cross-examination. At p. 18689 Mr. Cooper, in replying to a question by Mr. Covert, stated:-

"Personally, I had always thought of these adjustments in terms of income bonds, certainly so far as it was related to the repatriated securities."

That is the $391 million that Mr. Norman was talking about.

It is perhaps only fair to Mr. Cooper to refer to his statement that that view was not the view of the President or Directors of the Company since they recommended the issue to the Government of shares of common stock and not income bonds.

At p. 18945 I referred Mr. Cooper to this answer to Mr. Covert and, while, not trying to get him to express a view contrary to that of his President, I put this to him:-

"Certainly the income bond idea, whatever may be the official position with regard to it, would provide some pay out to what would be the equivalent of equity securities of the Canadian National?

A. Yes.

Q. In other words, an income bond is a means by which the holder of the security is entitled to participate only in earnings when they are made and to the extent made?

A. As defined in the contract.

Q. Yes. Well, there may be differences between them, but generally speaking we speak of income bonds as contingent interest bonds, in the sense that no interest is payable unless it is earned?

A. That is correct.

Q. So that had the matter of income bonds appeared in the proposal, there would have been some

provision for pay out to the holders of securities which are convertible in this recapitalization?

A. I think so."

At p. 18965 I asked Mr. Cooper further questions about his statement to Mr. Covert on p. 18689 when he mentioned that he had always had in mind income bonds at least for "repatriated securities." It is apparent at this page that he was speaking of approximately $400 million of securities which would be taken care of by the issue of income bonds.

However, at p. 18966, I referred him to the Canadian National Brief at p. 62 where there was a suggestion that in the early days of the Canadian National's existence, had receivership proceedings been resorted to "it is not unlikely that these loans would have been put on an equity or contingent interest basis." (I underlined that myself; the underlining is not in the brief). If that had been done in 1922-23 this would have involved income bonds to the extent of $804 million.

At p. 18967, Mr. Cooper agreed with my statement to him of the practice in the case of United States railway bankruptcies where he admitted the greater the variability of earning power over a period that is used as a test, the greater proportion of interest-bearing securities issued in bankruptcy proceedings would be on an income bond basis.

As to the cumulative feature, I think it only proper that there should be some provision for accumulation. I am not going to make specific suggestions on this but I do know that it is customary in the United States reorganizations to have some provision for accumulation. (See Mr. Norman at p. 20660).

THE CHAIRMAN: When you use the word "accumula-

tion"---

MR EVANS: Well, it means this: If, for example, you do not earn your income bond interest in one year, you may pick it up if your earnings are sufficient in subsequent years. Sometimes they have accumulations for three years, sometimes for five years, and sometimes fully cumulative; that is to say, you might pass them for twenty years, but in the end if you had earnings you would have to make them good as a first charge on available net income.

Mr. Norman at page 20660 said this:

> "In some cases they are cumulative up to 13½ per cent, some up to 18 per cent, and some fully cumulative . . ."

I have known of cases where they have been fully cumulative in the first mortgage bonds, and then the second with a limit on the accumulations, but I do not recall any that I have seen that have not had some cumulative feature.

The machinery is something like this, that the plan of reorganization and the provisions of the mortgage provide a definition of what they call available net income, and they provide arbitrary distributions of that in fixed priorities, and that is determined after the close of a fiscal year, and there is an obligation to pay the interest if it is earned, and the only exception to that is fractional percentages which they do not feel worth while distributing. That is quite readily found in the judgments in the finance cases in the Interstate Commerce Commission.

I, therefore, earnestly submit to your Commission that the two forms in which I have suggested that protection should be made should be adopted. With regard to the capital fund I am quite sympathetic with the view that a provision should be made for a capital fund to pay for non-

revenue-ppoducing additions and betterments and that the requirements of this fund should come in ahead of contingent interest requirements. At the same time it must be borne in mind that the same need does not exist for having such a large fund as in the case of the Canadian Pacific for two reasons;

(1) that the requirements would come in ahead of the contingent interest and would not preclude the earning of a small surplus after provision of such contingent interest;

(2) that the Canadian National does not need a fund to come and go on to the same extent as does private enterprise. Private enterprise must make provision for stabilizing its dividends, as Mr. Northey Jones put it, (pp. 20559-61) in poor years.

I should, perhaps, in closing refer to certain points taken by Mr. O'Donnell in his argument. The first is that the matter of recapitalization is of no concern to the Canadian Pacific and that the Canadian Pacific is meddling in the internal affairs of the Canadian National. Perhaps it would not be too much to suggest that the Drayton-Acworth Commission and the Duff Commission have recognized in their reports the difficulties which face the privately-owned company in competing with the state-subsidized Canadian National. They have mentioned these difficulties from the standpoint of the Canadian Pacific as the competing railway as well as a taxpayer.

Mr. O'Donnell goes on to say that if the Canadian Pacific were undergoing reorganization the Canadian National would not be permitted to intervene.

Whatever may be said on this subject, it is clear that the position of a privately-owned company in competition with a publicly-owned company is in a category by itself. The Canadian National proposals involve far more than merely

an arrangement between the creditors of the Canadian National and that company. They involve every taxpayer in Canada of which Canadian Pacific is one of the largest.

Moreover, what happens to the Canadian Pacific may ultimately involve not only every shipper in Canada but every taxpayer as well. It is, I submit, perfectly idle to suggest that the Canadian Pacific is merely meddling in Canadian National affairs.

I should further point out that Mr. O'Donnell attempts in his argument to suggest that the recapitalization of the Canadian National is separate and distinct from the matter of rate-making in this country. Obviously, if this were true, the Canadian Pacific would have no interest in its recapitalization proposals. It is because, I submit, of the very fact that the Canadian National is under no compulsion, as is the Canadian Pacific, to make its way without reliance on the public treasury, that the Canadian Pacific takes the position it does. The procedure of determining just and reasonable rates by the Board is certainly different from the procedure of recapitalization. But the two things are very closely related. It is to be borne in mind that the inevitable pressure that will be brought upon the rate-making tribunal, has been completely ignored by the Canadian National. The Canadian National has not gone so far as to suggest that their proposals could not affect the level of rates. Mr. O'Donnell merely says that that is a matter for another time and place; that the Board has a duty to fix just and reasonable rates; and that the two railways "are not going to enter into any rate war". He does not answer the argument that if, due to public pressure, the recapitalized Canadian National becomes the yardstick, rates made upon Canadian National requirements will be inadequate for the Canadian Pacific.

What your Commission is asked to consider is whether a publicly-owned company should be able to transfer to the taxpayers of this country an obligation which is primarily that of the shippers of this country who use the railway service. The principle which I submit your Commission should follow is that, until your Commission is satisfied that the shippers of this country cannot and should not be asked to pay the costs of the services which are provided for them, there is no possible justification for transfer to the shoulders of the taxpayers of any part of the costs of transportation.

I might elaborate on that, because I think perhaps it may be open to misconstruction. The transfer to the taxpayer takes place when the fixed charges are reduced and the Government assumes the primary responsibility for the payment. Now, it may be that they hold that debt, but as long as they have the claim outstanding against the Canadian National they have a first claim on the earnings after operating expenses for that debt. Once they give that up, one of two things can happen: (1) that the Canadian National holds the earning which it would otherwise pay as a surplus, and (2) that the public puts pressure on the Government not to take that by way of return on equity securities but to have that surplus applied as a stabilization fund for the reduction of rates. Then I say that the net result of that procedure is to transfer that burden to the taxpayer, whereas the income bond idea is the very reverse of that; the taxpayer bears only the burden that the railway cannot bear, and in that way if the railway does earn the taxpayer benefits; if it does not earn, the taxpayer naturally has to suffer.

As I pointed out earlier, I could have suggested

to your Commission that on the merits the recapitalization proposed by the Canadian National should be rejected. Canadian Pacific has not taken such a position because it does not want to be in a position of playing dog in the manger or of meddling in Canadian National affairs. It asks your Commission to recognize, even as the Drayton-Acworth Commission and the Duff Commission have recognized, that the Canadian P cific needs protection against the untrammelled competition of a publicly-owned corporation financed, as it is, by the credit of the whole country.

I make no apology for my appearance before your Commission on this question and I respectfully submit that your Commission should not be under any misaprrehension as to why I am here.

Mr. Sinclair has just handed me a note. The mileage that Mr. Fairweather said would have to be lopped off the Canadian National to get to the average traffic density of the Canadian P cific is shown at page 20150 in volume 109, and the mileage is 2,383 miles.

May I thank the Commission for their patience with me. It has been a pleasure to appear in this proceeding.

MR O'DONNELL: My lord, might I just before the Commission adjourns suggest this: I think, as the Commission will appreciate, this submission of Mr. Evans is one that requires a certain amount of very careful consideration and research, possibly, to find certain passages in the evidence and so on. In the circumstances I have to suggest to the Commission that it be good enough to allow me to start at it in the morning. We did not take our full four days on the main submission, and I think I can assure the Commission that we will save time through adopting that procedure. It will permit us to tidy up whatever we

have to say, and possibly restrict the discussion which we might otherwise embark on without having an opportunity to look the notes over and to find what we particularly wish to emphasize.

THE CHAIRMAN: The Canadian Pacific is through, is it?

MR COVERT: That is correct, sir.

THE CHAIRMAN: Is there anything else we could go on with for the rest of the afternoon?

MR COVERT: I do not know whether any of the provincial counsel are ready. After the intermission we will have about forty minutes, sir. I do not know whether anyone can---

MR MACPHERSON: I think, my lord, that provincial counsel felt that the Canadian National were following in closing after Mr. Evans, and I would not be ready to go on this afternoon. I have not my notes or my references here. I was expecting the Canadian National to go on.

MR COVERT: No takers of time, sir.

THE CHAIRMAN: Well, I think that Mr. O'Donnell's position is easily understood.

MR O'DONNELL: I am sure that it will result in a saving of time in the final analysis.

THE CHAIRMAN: In that case there is nothing left for us to do but to adjourn.

MR COVERT: That is right, sir.

THE CHAIRMAN: All right.

---The Commission adjourned at 3:58 p.m., to meet again at 10:30 a.m. on Tuesday, May 30, 1950.

A.R.

ROYAL COMMISSION

ON

TRANSPORTATION

EVIDENCE HEARD ON

MAY 30 1950

VOLUME

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ROYAL COMMISSION ON TRANSPORTATION

Ottawa, Ontario,
Tuesday, May 30, 1950
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ROYAL COMMISSION ON TRANSPORTATION

OTTAWA, ONTARIO
TUESDAY,
MAY 30th, 1950.

THE HONOURABLE W.F.A. TURGEON, K.C., LL.D. - CHAIRMAN

HAROLD ADAMS INNIS - COMMISSIONER

HENRY FORBES ANGUS - COMMISSIONER

- - - - - -

G.R. Hunter
Secretary

- - - - - -

COUNSEL APPEARING:-

F.M. Covert, K.C. G.C. Desmarais, K.C.	Royal Commission on Transportation
H.E. O'Donnell, K.C. N. J. MacMillan, H. C. Friel, K.C.	Canadian National Railways
F.C.S. Evans, K.C. K.D.M. Spence I.D. Sinclair	Canadian Pacific Railway
J.J. Frawley, K.C.	Province of Alberta
M.A. MacPherson, K.C. F.C. Cronkite, K.C.	Province of Saskatchewan
J. Paul Barry	Province of New Brunswick
C.D. Shepard	Province of Manitoba

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MORNING SESSION

OTTAWA, ONTARIO
TUESDAY, MAY 30, 1950.

THE CHAIRMAN: All right, Mr. O'Donnell; I understand you have something to say.

ARGUMENT IN REPLY BY

MR. H. E. O'DONNELL

MR. O'DONNELL: May it please the Commission, I will endeavour to be as brief as possible. First, I want to comment briefly on a number of points mentioned by Mr. Evans in his argument yesterday. Included in the proposal of the Canadian National for its recapitalization is the item of $804 million of interest-bearing debt which we say never should have been imposed on the Canadian National; and a substantial number of reasons were put before the Commission by us which we believe place our claim in this respect beyond dispute. Included in the reasons was a reference to recommendation 28 of the Drayton-Acworth Report. Mr. Evans has challenged our interpretation. We maintain that, on a fair reading of the Commission's recommendation, our interpretation is correct.

THE CHAIRMAN: Mr. O'Donnell, would you tell me this. I ought to have asked you earlier. Are you making any claim that the Statutes passed from time to time concerning you company have been violated in any way by the Government dealing with it?

MR. O'DONNELL: No. The Statutes have not been violated.

THE CHAIRMAN: I beg your pardon?

MR. O'DONNELL: I do not think the Statutes have been violated.

THE CHAIRMAN: I see. I am not asking you this contentiously.

MR. O'DONNELL: I know that, my lord.

THE CHAIRMAN: You refer to this item of $804 million.

MR. O'DONNELL: Yes.

THE CHAIRMAN: You say it ought not to have been imposed upon you.

MR. O'DONNELL: Yes.

THE CHAIRMAN: Was it imposed on you by Statute or how?

MR. O'DONNELL: It was imposed on us in this way: when the roads were taken over, that $804 million of interest-bearing securities was taken into the new company and the interest charges have been charged against it on these bonds ever since. In the final analysis, the Government provides the interest, and on the recommendation in the Drayton-Acworth Report, on our reading of it, the Government was to assume the responsibility to the railway company for the inter st on the existing securities of transferred companies. We are suggesting now that this item should be taken out of our accounts and that we should not have to run it through the books.

THE CHAIRMAN: Yes. I want to make sure of two things. In the first place, is there any statutory provision imposing this burden on you by Statute?

MR. O'DONNELL: Off-hand, I do not know of any Statute. I say that we have had them imposed on us through the manner in which it was handled.

THE CHAIRMAN: If the answer is in the negative,

my second question is this. Was any Statute violated when this burden was imposed on you? If there is no light at all to be had from the Statutes in one way or another, then we will proceed without itIt would look to me at this stage that that last position is the one you are in, that no Statute was ever passed binding you to take over these burdens.

MR. O'DONNELL: No, I do not think so.

THE CHAIRMAN: And on the other hand when they were imposed on you, no Statute was violated?

MR. O'DONNELL: That is correct. But we have had the burden nonetheless, and our contention is that we should never have had the burden.

THE CHAIRMAN: I understand that. I just want to clear away whatever legal question there might be there. According to what you tell me, there are none.

MR. O'DONNELL: As far as I know, in that way.

THE CHAIRMAN: Yes.

MR. O'DONNELL: All we say is that, when the Drayton-Acworth Commission recommended that the Government assume responsibility to the Dominion Railway Company for the interest on existing securities of transferred companies, that that should have been done in a more definite form than has been done. As I say, the interest is provided, where it is not earned, by the Government because the liability as a guarantor of the obligation was on the Government, and the Government in the final analysis does provide for the interest.

THE CHAIRMAN: We know the procedure.

MR. O'DONNELL: Yes.

THE CHAIRMAN: Tell me about these entrustments. You complain of these entrustments because they carry burdens with them. That is right, is it not?

MR. O'DONNELL: Yes, my lord.

THE CHAIRMAN: Does that language of the Act, which says that the Governor-in-Council may entrust the railways to you, authorize doing what has been done?

MR. O'DONNELL: They can be entrusted under the Statute on such terms and conditions as the Governor-in-Council may from time to time decide. There is no question about that. Section 19 - -

THE CHAIRMAN: What is Section 19?

MR. O'DONNELL: Of the Canadian National Railways Act.

THE CHAIRMAN: What does it say?

MR. O'DONNELL: It reads as follows:-

"The Governor in Council may from time to time by order in Council entrust to the Company the management and operation of any lines of railway or parts thereof, and any property or works of whatsoever description, or interests therein, and any powers, rights or privileges over or with respect to any railways, properties or works, or interests therein, which may be from time to time vested in or owned, controlled or occupied by His Majesty, or such part or parts thereof, or rights or interests therein, as may be designated in any Order in Council, upon such terms and subject to such regulations and conditions as the Governor in Council may from time to time decide; such management and operation to continue during the pleasure of the Governor in Council and to be subject to termination or variation from time to time in whole or in part by the Governor in Council."

THE CHAIRMAN: What they entrust to you is the management and operation?

MR. O'DONNELL: Yes. As your lordship will remember, we suggested that in the case of the Canadian Government Railways where the interest had never been charged to the department when the department was operating these roads, that upon the entrustment to the Canadian National Railways, the Canadian National Railways was obliged to find and provide the capital for capital expenditures and we have considerable burden in that way. We say as agent for the Government there was no reason to change the method of doing business prior to the entrustment; and that when the roads were turned over to the Canadian National Railways, the heavy interest burden was imposed upon the Canadian National Railways

(Page 24325 follows)

We have in that respect the suggestions of a number of people. Mr. Norman even suggested that these roads that were operated in the national interest should be segregated and kept apart for the account of the Government, and that they should not be in the accounts of the Canadian National Railways at all. However, I think I developed that argument as best I could in chief.

Now I would come back to what I was saying. Mr. Evans challenged our interpretation of the Drayton-Acworth Report. We maintain that on a fair reading of the Commission's recommendations it is correct. Regardless, however, we say, as to which interpretation is correct, it in no way disturbs our submission that the $804 million should not have been imposed on the C.N.R. as interest-bearing debt at its inception.

THE CHAIRMAN: By the way, there was a preamble that is not here and was to be produced; has it been produced?

MR O'DONNELL: A preamble to which, my lord?

THE CHAIRMAN: It is the preamble to the Act of 1937, which I said the other day might contain something enlightening in it, as preambles are supposed to do. It is left out of this consolidation.

MR O'DONNELL: Isn't that possibly the preamble to the Maritime Freight Rates Act?

THE CHAIRMAN: Oh, no.

MR O'DONNELL: That is the only preamble that I heard spoken of.

THE CHAIRMAN: No. When we were discussing the Canadian National Railways Capital Revision Act the other day, we were told that there was a preamble which was not in this pamphlet, and that it would be produced.

MR O'DONNELL: Well, I do not---

THE CHAIRMAN: I noted it here as that was said, but I have not seen it yet.

MR O'DONNELL: Well, my lord, I am sorry, but I do not know of any preamble. I have the statute assented to on the 10th of April, 1937. It is 1 George VI, chapter 22.

THE CHAIRMAN: I know; you have probably what I have. The way to determine whether or not there was a preamble would be to get the statutes of that year 1937.

MR FRIEL: I will get that statute.

MR O'DONNELL: As far as I know, my lord, there is no preamble other than the statute itself.

THE CHAIRMAN: Somebody said there was the other day.

MR O'DONNELL: That is all I have to say on that point.

Mr. Evans referred at page 17 of his argument yesterday to a table prepared and filed by Mr. Fairweather showing the effect of inflation on the lines of railway having a lower average traffic density (p. 20093). Mr. Evans seemed to infer that Mr. Fairweather had attempted a comparison between the Canadian National Railway and the Canadian Pacific Railway.

The hypothetical cases of Roads A and B as shown on that table were used to show the effect of inflation and were not designed to represent the Canadian National and the Canadian Pacific. There is no question of their being there in disguised form. It is purely a hypothetical case to illustrate the principle involved. The principle was admitted on page 19 of Mr. Evans' argument, and it becomes then merely a matter of the amount.

It is suggested by Mr. Evans that the amount is negligible. If this be so, then how does one explain the

constant difference of $20 million a year in the operating results of the two properties?

The effect of inflation on this $20 million a yearfor any considerable degree of inflation is a substantial item. For instance, at 50 per cent inflation it would be $10 million a year.

Now, the Commission will bear in mind when considering the reference on page 20 of Mr. Evans' argument to Exhibits 255 and 256 that Mr. Cooper said with regard to these two exhibits, which were filed by Mr. Evans and purported to indicate theoretical surpluses on a restatement basis for the years 1940 to 1948, that they were unrealistic and not worth checking (p. 19047.).

At page 20 Mr. Evans refers to a statement of Mr. Cooper at page 19029 to the effect that "but for the imbalance between rates and costs and the acquisition of the Newfoundland Railway and the Temiscouata the Canadian National would earn substantially its wartime surpluses." We suggest, my lord and members of the Commission, that the testimony of Mr. Cooper on the pages following makes it clear that his full view on this subject is other than as stated by Mr. Evans. Mr. Cooper (Vol. 102, p. 19033) agreed that "in years of high traffic volume" the Canadian National would"have reasonably good surpluses", but questioned Mr. Evans' suggestion that "You would have probably in some years surplus of the magnitude that you had during the war years" by saying, "In 1943 we earned 26½¢ out of every dollar after we had paid our operating costs. In 1949 we earned 4½¢ out of every dollar."

Mr. Cooper went on to say (p. 19035):

"I cannot quite visualize ever a return to what we might call the prosperous years of war."

And again:

"I like your optimism, Mr. Evans. I am probably a little more conservative .....than you are."

Mr. Cooper's reasons are readidy understood when one considers the conditions permitted to the railways during the war period and the relative prosperity which they enjoyed (Exhibit 214, p. 33).

Mr. Cooper again said (p. 19039):

"I do not believe for one minute..... that we may have a recurrence of the surplus earnings of the Canadian National which we enjoyed in the war years."

Mr. Evans throughout his argument cites Mr. Northey Jones and Mr. Norman as to their estimates of possible earnings, but I submit he completely overlooks their statement and admissions that they had no information or insufficient information as to or had made no studies concerning the Canadian National figures. They agreed that the Canadian National officers were in a better position than they were to make such estimates.

As to the earning power of the Canadian National, I submit the evidence of the Canadian National witnesses, Mr. Fairweather and Mr. Cooper, can be relied on with confidence by the Commission.

My lord, if I might just interrupt my argument here, with respect to the statute, the Canadian National Railways Act, 1919, 9-10 George VI, chapter 13, I do not find any preamble other than that one recital.

THE CHAIRMAN: That is not the one. I told you the Canadian National Railways Capital Revision Act of 1937; that is the one.

MR O'DONNELL: Well, my lord, in that case I also find there is no preamble. All I have is the statute, as you have it, I think, my lord.

THE CHAIRMAN: It is a mistake, then.

MR O'DONNELL: The only one that I remember any mention being made of is the preamble in the Maritime Freight Rates Act.

THE CHAIRMAN: Well, we have that.

MR O'DONNELL: I know of none other, my lord.

At pages 20-21 of Mr. Evans' argument yesterday there is reference to the C.P.R.'s fear that the Canadian National with surpluses available to it would not join in an application for a rate increase. As to that, I point out this: The Canadian National during the war years and the immediate post-war years had substantial surplus earnings which the directors dealt with according to their discretion. This did not prevent the Canadian National R ilways from joining with the Canadian Pacific Railway in an application for a rate adjustment when an imbalance between revenues and expenses became apparent. What happened in that case is the best indication of what would happen in the future.

At page 22, as to the suggestion of Mr. Evans that the effect of the Newfoundland Railway is really being used twice in the Canadian National submissions, it will be remembered that we set up negative capital to the extent of $134 million to cover the operating losses to be experienced on the Newfoundland Railway in the compilation of the gross capital burden of interest-bearing debt of $1,533,000,000.

The effect of the Newfoundland Railways, however, is not actually being used twice, as suggested by Mr. Evans. If the Canadian National's proposal is implemented in its entirety it will have then the effect of granting to it a fixed charge relief in the sum of approximately $30 million per annum.

The possibility of the Canadian National enjoying substantial surpluses in the future has been tested by use of the statistical average density since 1923 of approximately $20 million, to which has been added $5 million for depreciating accounting and $4 million odd for the Newfoundland Railway losses, making a total of approximately $29,900,000, full particulars of which I have already given to the Commission.

(Page 24331 follows)

There is obviously no duplication of the effect of the Newfoundland Railway. In the first instance Newfoundland has been included to determine the extent of the existing capital burden whereas in the second instance Newfoundland has been included as a means of equating to present day circumstances the probable deficits if the Canadian National proposal be not implemented. The lack of the suggested double use of Newfoundland is immediately clear when one removes Newfoundland from both calculations. When it is extracted from the relief which Canadian National seeks for excess capital debt burden the remainder of our submission would be given likewise to relief in the sum of $26 million. On the other hand if we extract Newfoundland from the operating deficit to be expected, based on the 1923 average plus depreciation accounting, the resultant figure is again $26 million.

Beginning at page 24282 Mr. Evans advances the contention that taking Mr. Norman's sheets 1 and 2, and Mr. Cooper's exhibits, Nos. 276 and 277, and on the basis of my cross-examination, that Mr. Norman's sheets 1 and 2 stand as a reasonably accurate view of what may well happen in the future. Mr. Evans argues that the evidence supports his contention that in 1949, with a 20% increase in rates in effect throughout the year, the Canadian National would have had a surplus of $28 million whereas the Canadian Pacific would have only had $14 million.

As the Commission will remember, this viewpoint was contradicted by Mr. Cooper whose exhibits showed that the Canadian National surplus would have been $13,564,000 whereas the Canadian Pacific surplus would have been $34,840,000. While the differences between the two witnesses were easily established, and had to do with

deferred maintenance, income tax and Canadian Pacific dividends, Mr. Cooper's evidence was at such variance with Mr. Norman's that it is difficult to understand my friend's contention. There is no doubt in our view whatever that if the results of the two railways in 1949 are stated on a strictly comparable basis the Canadian Pacific surplus is very substantially in excess of the Canadian National.

After the noon adjournment yesterday, Volume 136, page 24284, Mr. Evans referred to the Canadian National operating budget for 1950 as used in the statement which appears at page 24082, and pointed out that there was not in his view a decrease in expenses commensurate with the decrease in traffic volume of $12,116,000 referred to by the president in his evidence before the parliamentary sessional committee. Mr. Evans pointed out that the budget showed an increase of $4 million in expenses whereas he expressed the thought that instead of an increase there should be a decrease of about 70 per cent of $12 million or $8,400,000.

The explanation is that the decrease of $12 million represented a decrease of slightly over 2 per cent of the traffic volume for the previous year. As you can see, an immediate decrease in expenses proportionate to the decrease in gross revenue is not to be expected, especially if the decrease is in such a small proportion as 2 per cent. Two per cent in the number of passengers carried per train mile or in the number of tons carried per ton mile makes very little difference in operating costs. Thedecrease in traffic volume fully reflected in operating expenses when it is sufficiently large to permit of lesser number of cars per train or a reduction in train miles themselves. The detail as to the increase of $4 million in operating expenses

as budgeted was not asked for but Mr. Cooper tells me that the information was available to the parliamentary committee if it had been asked for.

To clear up the point raised by Mr. Evans, I am informed by Mr. Cooper that the budget estimated there would be a decrease in expenses in respect of decreased traffic volume in the amount of $4,609,000 but that this decrease was overtaken by expenses from other causes as follows: Cost of the 40-hour week on United States lines, $500,000; increased price of fuel, 6,000,000 tons at 50 cents a ton, $3,000,000; increased accruals for equipment depreciation, $1,292,000; Newfoundland district 12 months, 1950, compared with nine months 1949, $3,898,000; increased pensions $917,000, making a total of $9,607,000, less additional credit fromdeferred maintenance reserve, $1 million, leaving a balance of $8,607,000.

In answer to my friend therefore,I say that the Canadian National budget for 1950 forecasts a decrease in expenses of $4,609,000 on account of the decrease in traffic volume compared with the previous year but on the other hand forecasts an increase in expenses from causes other than traffic volume amounting to $8,607,000, for which I have supplied the details. The net of these two figures is $3,998,000 increased expenses as reflected in the budget.

Perhaps I might add that the operating budget of the Canadian National is not a computation determined by the application of some formula but represents the collective opinion of the operating and traffic officials of the railway,collected and put together at headquarters, and after review by the president and executive officers and after submission to the board of directors is

transmitted to the government for government approval, and as such in my opinion is a forecast on which the Commission can place full reliance. Should the Commission or its advisers or experts or Mr. Evans desire any further information as to the data I have just mentioned it can be readily arranged.

COMMISSIONER ANGUS: Is that type of increase consistent with your hypothesis of the imbalance of costs and revenue being removed?

MR. O'DONNELL: Every year we have increases in expenses that crop up and that cannot be forecast accurately, for instance, snow storms or slides. I am told by the operating experts of the railways that every year there are these cases.

COMMISSIONER ANGUS: I did not mean that. You began your original argument with the supposition that the imbalance between costs and revenues was being continually removed by appropriate increases in freight rates. Is that the type of case that you have just mentioned, a case which would be removed under that hypothesis? It is not actually removed.

MR. O'DONNELL: Some of these items would undoubtedly justify applications for a change. There is no question about that.

MR. EVANS: That was my only point.

MR. O'DONNELL: All I am saying, Dr. Angus, is that on the latest available information the forecast as presented by the Canadian National officers can be relied on. They are up to date and they show the picture as it stands. At the present time the exhibit Mr. Cooper presented in the form of the budget is the latest available estimate in so far as the Canadian National is concerned, and if the proposals suggested by Mr. Gordon had been put

into effect the position would not indicate any heavy surplus as suggested by our friends of the C.P.R. At page 24283 Mr. Evans stated that on the basis of Mr. Norman's tables the 1949 results of the Canadian National after giving effect to the 20% increase in rates would show the railway had an operating ratio of 88.5%.

In my respectful submission Mr. Cooper is better qualified than Mr. Norman to explain the Canadian National accounts. If the details underlying his exhibits 246 and 277 are analysed it will be found that the operating ratio was 90% for the year 1949, and you will recall, my lord and members of the Commission, that included the Newfoundland railway only for nine months. The best indication of the Canadian National's present operating ratio will be found from an analysis of the figures underlying Mr. Cooper's statement at page 24822. Taking the budget for the year 1950 as adopted by the sessional committee on the 11th of May, 1950, and adjusted as indicated at page 24082, one will find an operating ration of 93.2%. It is my respectful submissinn that 93.2 is the most realistic figure that can be developed as to the operating ratio of the Canadian National under conditions as they exist today.

At page 23 Mr. Evans suggested in the course of his argument that the Canadian National proposals had failed to take into contemplation "one of the most important reasons that can be presented in support, namely, its earning power in future years." I respectfully submit that such is not the case. The Commission will recall that Mr. Fairweather in the course of his testimony specifically referred to the potentialities of the Canadian National Railways in future years.

(Page 24337 follows)

I respectfully submit that such is not the case and the Commission will recall that Mr. Fairweather in his testimony specifically referred to the potentialities of the Canadian National Railways in future years. You will find this evidence spelled out in his examination-in-chief on page 20083 and following. It might moreover be indicated, my lord and members of the Commission, that a great deal has been said about the earning power of the Canadian National and unquestionably it is a matter of vital importance in the determination of a sound and realistic capitalization of the railway. The record of the past is in evidence before you; and the vissicitudes of the last 27 years find their reflection in that record. There are the years of plenty and the years of famine; war years as well as the years of depression have left their imprint. They all add up to one unmistakable fact, that the earning power of Canadian National in the past has fallen far short of what is necessary to support the capital structure imposed on the railway.

If any consideration is to be given to this past record I ask you to bear in mind that some of the conditions which exist today are not reflected in their entirety in the accounts of previous years. I am referring to pensions, depreciation, the Temiscouata Railway, and the Newfoundland Railway.

What of the future? As Canada grows and develops, so we may expect traffic volume of the railway will increase and so will its gross revenues, but we do not know to what extent this expansion will be carried through to the net income result. If increases can confidently be expected in gross revenues it is certain they will be accompanied by increased costs of operation.

I have questioned myself as to what I should say to you on this matter. It is my respectful submission that the best thing to do is to examine the immediate situation and try to appraise it as accurately as possible, and I believe that that has been done in the statement at page 24082. This is a constructed income statement for Canadian National for the year 1950. It is based on the official budget of the railway examined and adopted by the Parliamentary Committee. It takes credit for all the freight rate increases which have been granted, and assumes that they have been in effect for the full twelve months. It takes credit for the relief in fixed charges which the railway's proposals are intended to provide. The Forecast is based on traffic earnings higher than ever before; indeed, they are put at a figure $86 millions higher than in the peak year of the war. There are no future revenue increases in sight; traffic is falling off; the railways face additional wage demands. A majority report of the Board of Conciliation have recommended certain adjustments which the railways have agreed to accept.

For the Canadian National the recommendation of the majority report would add $11,100,000 a year to the railway's costs. This may or may not be covered by a further rate increase. The expense is certain the relief is problematical.

Some question has been raised with respect to the credit of $9 millions from the deferred maintenance reserve. Even if the contentions of my friend are accepted, and I do not think they should be, even so, the surplus of the railway would only be $9 millions.

What is there on the horizon to indicate that happier days are ahead? We cannot see the rising sun of prosperity which my friends seem to see so clearly. I

submit we must be realistic in this matter and not delude ourselves by any wishful thinking. The responsible officers of the railway have expressed to you their firm conviction that if these proposals are adopted and implemented, by and large, taking the good years with the bad, the railway can expect only to about break even, and I submit that this is the most authoritative and dependable view to take.

Moreover, as to the earnings of the C.N.R., all the C.P.R. witnesses agreed that C.N.R. officers were better able to assess those than they were. I will not take the time of the Commission again to refer to the evidence. The Commission will undoubtedly have it in mind.

Yesterday my friend Mr. Evans in Vol. 136 at page 24238 said in part as follows:-

> "As our Brief indicates and as Mr. Walker stated and I have stated on several occasions to your Commission, the position of the Canadian Pacific does not involve any suggestion that the Canadian National should not be entitled to such relief from the burden of fixed charges as it may be able to establish as necessary and proper. What the Canadian Pacific is concerned with is to see that the nature of the relief and the conditions under which it is granted, if it is granted, will not place the Canadian Pacific in jeopardy."

Then he gives a reference to his opening statement to Mr. Cooper at page 18916. Then again, at page 24264 he says:-

> "We have no objection if the fixed charges are reduced as proposed

as long as certain other things, which I am going to mention , are done."

MR. EVANS: What page is that, Mr. O'Donnell?

MR. O'DONNELL: That is page 24264. Then at page 24302 Mr. Evans refers to these other things. He said:-

"How then can the advantage of the recapitalization and of improved morale be obtained by the Canadian National while preventing harm to the Canadian Pacific? That is the full question which I ask your Commission to deal with, and in my submission the answer to it is comparatively simple."

Then the suggestions Mr. Evans puts forward are twofold. The first one is right at the bottom of that page 24302 where he put forward a proposal for their amendment to Section 325 of the Railway Act and the second proposal a further measure, as he puts it relates to the use of income bonds, and that will be found at page 24306. So that Mr. Evans says:-

"The sole question which I ask your Commission to deal with and in my submission the answer to it is comparatively simple, relates to these two subjects, the proposed amendment to Section 325 and the use of income bonds." Obviously the only reasons that Mr. Evans mentions those two items are that there are remote possibilities of future substantial earnings on the C.N.R., in the view of the Canadian Pacific, which in our view is quite contrary to the weight of the only evidence that there is on the subject in the record. As to the

proposed amendment, Section 325 (7).

The Canadian Pacific, by the proposed amendment to Section 325 of the Railway Act, would provide that rates would not be deemed to be just and reasonable unless, taken as a whole, they were sufficient to provide a fair return on its railway property investment, the Board to determine from time to time the investment in railway property upon which such return is to be calculated and also to determine the rate of such return. The avowed purpose of the proposed amendment is to protect the Canadian Pacific from the alleged result of the Canadian National proposal. The principle, however, which would be established by this section, I say is a very dangerous one, if not an entirely vicious one. The Canadian National has expressed itself - -

THE CHAIRMAN: Dangerous to whom and in what respect?

MR. O'DONNELL: I am going to develop that, my lord. I say that it is not a proper basis for rate-making, roughly, but I am coming to that. The Canadian National has expressed its position on the amendment and takes the position that Section 325 as presently worded affords to the Board of Transport Commissioners all necessary discretion to deal with the matter of rates in the interests of the railways, the shippers and the public.

The proposed amendment is obviously based on the bland assumption that there is an arithmetical relationship between a designed return to the Canadian Pacific and the level of rates.

THE CHAIRMAN: Pardon me a moment. Are you saying that the Board now has the power, if it wishes so to do, to act on this suggested amendment?

MR. O'DONNELL: I do, yes, my lord.

THE CHAIRMAN: But you say it would be dangerous?

MR. O'DONNELL: The Board is unfettered as to the manner in which it fixes freight rates. It may adopt -- and I think my friend Mr. Evans admitted and acknowledged that the Board today has the right, if it chooses, to adopt a rate base and a rate of return method of fixing rates.

THE CHAIRMAN: If the Board do decide to adopt that method, would you still say it was a dangerous method?

MR. O'DONNELL: I say putting it in the Statute in the form that is suggested would be fettering the Board.

THE CHAIRMAN: That is what constitutes the danger?

MR. O'DONNELL: Yes. I say that that is not a proper basis for making rates and that the Board, with the broad powers that it has today -- and I go on to develop that -- is in a position to see that rates are just and reasonable at all times and is not hedged about by any formal or any statutory restrictions. It is given the broadest discretion. The Supreme Court has said it has the broadest powers in that respect. I go on here to say that the proposed amendment, necessarily assumes that the designed rate of return to the Canadian Pacific is synonymous with reasonable rates, which means that the Board of Transport Commissioners could not prescribe a lower level even though it considered a lower level reasonable for the shipper or in the public interest. In other words, the Board's discretion is seriously hampered in a way which could easily work an injustice to the public. Capital invested in the Canadian Pacific -- and equity capital at that -- takes precedence over the economy of the country. Thus, as it becomes progressively more difficult to obtain net revenues in the sections of Canada where competition with other forms of transportation is intense, there would be an automatic mandate to the Board of Transport Commissioners

to pass the deficiency on to the long-haul traffic.

There is evidence, however, that there is not sufficient elasticity of demand to permit this to be done without serious damage to the productive economy of the country, and to the extent that this is the case, the proposed amendment would defeat its own end. But in the process of demonstrating its unworkability, conceivably great damage could be done to other railways -- particularly the Canadian National -- and to the productive economy of the country. It is because so many complex factors enter into just and reasonable rates that the broad powers presently defined under Section 325 are much to be preferred to the provision of a sanction for a fixed and guaranteed return to the Canadian Pacific Railway under all conditions.

COMMISSIONER ANGUS: I do not know whether this is a question for you or for Mr. Evans; but in the proposed amendment, do the words "from time to time" apply both to the rate base and to the rate of return?

MR. EVANS: That is our intention. It clearly does.

MR. O'DONNELL: That the rigidity inherent in the proposed amendment is dangerous can perhaps be best illlustrated by consideration of the evidence given for both the Canadian National and the Canadian Pacific. Mr. Fairweather has stated that the danger point is at hand in respect to further rate increases (Vol. 110, p. 20218; Vol. 117, p. 21259); the Canadian Pacific, on the other hand, thinks that the danger point is far away.

THE CHAIRMAN: By the danger point, do you mean pricing yourselves out of the market?

MR. O'DONNELL: Yes. Mr. Fairweather did not say that point had actually been reached, but he said, as I remember the evidence, that one would have to weigh the

the circumstances very closely and use very extreme caution in proceeding further at this point; we are getting near, in his view, the point where we would be pricing ourselves out of the market.

COMMISSIONER INNIS: Does this explain the difficulty which Mr. Evans described yesterday with regard to the 4% increase in competitive rates?

MR. O'DONNELL: That, I think, is an instance. It occurs to me that the Canadian National is of the view that with respect to these competitive rates, if they were to be increased any further, we would more or less loose traffic to the trucks. Mr. Fairweather informs me that he has made a very careful study of that, and that at this point he is convinced that, on checking of the trucks, that is what would happen. If the rates are truly competitive and can be increased, then the C.P.R. could hold the traffic, but that is a question; and on our appraisal of the situation here in central Canada where the bulk of these rates are rates under which the Canadian National operates -- because I think we have the bulk of the traffic in central Canada -- we feel that an attempt to increase these further at this time, except in individual cases -- and these individual rates are being examined at all times -- would be detrimental to the overall net revenue position.

As I was saying, if Mr. Fairweather is correct, the country would be asked to pay a very heavy price to prove that the Canadian Pacific is wrong. The Board of Transport Commissioners has generally speaking, allowances being made for time lags in the last several years, to provide adequate rates for the C.P.R. and all the railways of Canada. In this connection I refer to the works of exhortation used by Mr. Evans several days ago make it very clear

as to the rebuilding of our faith in the machinery or regulation which the Board of Transport Commissioners has provided in an impartial way through the years.
To use his own words (at p. 5 of his Argument) I say that this particular bogey is (and I quote):-

> ".....really born of a fear that something less than justice will be obtained if the complaints are submitted to the Board set up under the Railway Act to administer the Act and to hear thesecomplaints."

He was there speaking of complaints by the provinces. Let us substitute the word "complaint" for application by the Canadian Padfic or by the Canadian National or any other railway.

(Page 24347 follows)

There is no reason why we should not have the same assurance in the fairmindedness of the Board of Transport Commissioners that it will do its duty as it should.

Mr. Evans further made remarks that are apt in so far as rate-making duties of the Board are concerned, at page 32 of his earlier argument. I am sorry, I have not got the page references, but I can find them and send them to the Board if they wish. Mr. Evans said:

> "It is of the very essence of the exercise of the duties of the Board that these duties shall not be hedged about by complicated statutory directions but on the other hand should be as largely as possible left to the discretion of the tribunal."

THE CHAIRMAN: Who said this?

MR O'DONNELL: Mr. Evans. Then he went on to say, again:

> "Moreover, curbs on discretion have two major shortcomings. First, statutory directions constitute the principal source of legalistic disputes which can only be settled by an appeal to the courts. It is under such directions that questions of law arise."

And again he went on to say:

> "The Interstate Commerce Act is full of directions of the most complex and detailed character. In my view Canada would do well to avoid following the lead of the United States in this respect."

For reasons such as those advanced by Mr. Evans we opposed the proposed amendment to section 325. In our view there is no justification for hampering, curbing or hedging about of the Board in the exercise of its administrative function in fixing just and reasonable rates.

The Supreme Court of Canada in the case of the Government of Alberta vs. C.N.R. and C.P.R., 1931, S.C.R. p. 668, referring to the powers in section 325(5) -- I refer to the remarks of Mr. Justice Rinfret, as he was then, now the Chief Justice of Canada, when he said, regarding the powers in section 325:

> "The enactment of 1925 begins by conferring on the Board powers of the most sweeping character - 'to fix, determine and enforce just and reasonable rates, and to change and alter rates as changing conditions or cost of transportation may from time to time require'."

Now, that enactment, I say, my lord and members of the Commission, has worked satisfactorily for twenty-five years, and similar powers for almost fifty years. During all that time the Canadian Pacific and all the railways in Canada have been provided with adequate rates to keep them alive and able to do the work, the very important work that they have to do, and I ask, why suddenly should the Canadian Pacific's faith in the impartiality and fairness of the Board fail it to the extent of allowing their witnesses, Mr. Northey Jones and Mr. Norman, to predicate fears of surpluses to come for the Canadian National upon failure by the Board to do its duty in fixing rates? -- fear that the Board might yield to public clamour!

Well, the Board was set up as a buffer between the public and the railwayss, to resist extreme appeals by the railways or by the public, the railways to increase, possibly, and the public to reduce. That is the function of the Board; that is why they were given the very broad powers they were given. That is why, in our respectful submission, they should not be hampered, and what happens

in the United States, as Mr. Evans points out, on the Interstate Commerce Commission, should not be allowed to develop here. The Board can be relied on, we submit, to do its full duty, as it has in the past, and there is no need for this amendment, because under the Act as it stands the Board can fix rates on the basis that is suggested by our friends, that is, the rate base with a rate of return, if the Board deems it the proper thing to do. But a rate base is but one factor in the fixing of rates; there are many, many other elements concerned, and I think we can safely rely on the Board to do what it should in the circumstances.

When this amendment as proposed originally was submitted there was considerable discussion with the Commission and with my friend Mr. Evans, which will be found in volume 111, beginning at page 20313. I pointed there to the remarks of the learned Chief Commissioner Cross in the 21% Case, where he has been asked by the respondents to disregard the needs or the requirements of the Canadian National entirely, and I shall not take the time to repeat the extracts there, other than to refer to this short one:

> "Some regard must, I consider, be had to the needs of all the railways. But, as there can only be one rate for all railways, we should, I think, endeavour to arrive at a just and reasonable mean between the railways in fixing the rates."

I emphasize the word "mean". It is true that one set of figures is used to judge the rate, but on the other hand---

THE CHAIRMAN: What mean was arrived at, and how is it expressed in figures?

MR O'DONNELL: Well, the mean arrived at and expressed in figures ultimately was a 21 per cent increase

based on the---

THE CHAIRMAN: Based on what?

MR O'DONNELL: On the Canadian Pacific's figures at that time -- which would provide the mean at that particular time to do justice to all the railways in Canada. That is my interpretation of that judgment.

COMMISSIONER ANGUS: A mean between what?

MR O'DONNELL: Well, weighing all the circumstances. The Canadian Pacific had asked for 30 per cent at that time, all the railways had asked for 30 per cent, and, weighing all the circumstances, the requirements of the railways as well as of the shippers and the public, the Commission came to the conclusion that 21 per cent would provide what was proper for the time being by way of rates.

COMMISSIONER ANGUS: You do not mean a mean between the needs of the various railways, then?

MR O'DONNELL: Well, I have some cases here. I say that the authorities are that you cannot disregard the railways, you must consider all the railways, not just one of them, not the richest, not the poorest.

COMMISSIONER ANGUS: My difficulty is this: How can you regard -- you must not disregard, but how can you regard the Canadian National Railways if it has no estimate of its needs?

MR O'DONNELL: Well, at this point the Canadian National Railways was before that Board with details as to what had happened to it in the year or two immediately preceding the hearing of that case in the way of increased costs of operation. It said, "Our costs of operation have, by reason of wage increases and material price increases, gone up so much, and we think that an adjustment should be allowed us for those increases." Now, those were the

measures on that particular application of the adjustment in so far as the Canadian National at that point was concerned. We put the figures before the Commission as to what the increased costs of operation were. That was the basis on which our case was submitted, and we said, "If you grant the application it will meet, to the extent of whatever the figures were, these increases that have occurred in these past few years." Now, the Board said that it should not disregard the Canadian National entirely in those circumstances, and that it should seek to find, as the Chief Commissioner said, a mean between the railways. I agree that the rates ultimately were fixed on the basis of the C.P.R.'s requirements, but on weighing that I submit that the Commission came to the conclusion, and one has to read the 21% Case judgment to see the remarks there of the Assistant Chief Commissioner, to the effect that, while that will not go the full way in so far as the Canadian National is concerned, 21 per cent is fair in the circumstances.

THE CHAIRMAN: Leaving aside the percentage, can you say that taking the requirements of one constitutes a mean with the other?

MR O'DONNELL: Well, I do not think so. I think that the mean is to be found by looking at all of them. The Chief Commissioner said:

> "Some regard must, I consider, be had to the needs of all the railways. But, as there can only be one rate for all railways, we should, I think, endeavour to arrive at a just and reasonable mean between the railways in fixing the rates."

COMMISSIONER ANGUS: Is your suggestion, Mr. O'Donnell, that if the increase had been based on the position of the Canadian National alone, on its argument

as to increases since a certain date, you would have got more than 21 per cent?

MR O'DONNELL: Well, you see, the Board has in mind, the Board knows, that we have not had to pay income tax; the Board knows that; the Board knows that we have not had to pay dividends; the Board understands that. And the requirements of the C.P.R. always take into consideration, or always have to date, those factors, the income tax, the dividends.

COMMISSIONER ANGUS: I gather that you are complaining in a way that your position was not taken into account, or not fully taken into account. Would theeffect of taking it into account have been to give a higher or a lower increase?

MR O'DONNELL: I am saying simply this, Dr. Angus, that the Board's duty is to look at all the railways and try to strike a rate that will assist the railways and yet not harm the public any more than is necessary. Those factors are all weighed by it, and in its unfettered discretion it has to endeavour to establish what are referred to as just and reasonable rates, weighing all the factors and all the circumstances and the effect upon all the parties concerned; and it should not just tie the economy of the country to the position of one road.

As it stands now, section 325 needs no amendment to provide ample justice to the Canadian Pacific, just as it has through the years that it has been in operation.

The Assistant Chief Commissioner in the 21% Case said, at page 79:

"While my calculations have been based upon the figures and requirements of the Canadian P cific Railway, I am not at all unmindful of the requirements of the Canadian National Railways.

These railways, so important to Canada, have now become well integrated and have a high standard in service and operating efficiency.

It is a responsibility not easily assumed to completely ignore them when fixing a rate increase. And I do not think that they should be."

Now, I do not intend to take the time of the Commission in referring to the cases that I referred to before, but I pointed out that through the years rates have been fixed by the Board, in the Western Rates Case, the Eastern Rates Case, the 15% Case and the 40% Case, in 1917, 1918, 1919 and 1920, and different roads had been taken. For instance, I mentioned that Sir Henry Drayton in the Western Rates Case in 1914 said, in part:

"To my mind it is quite impossible for the Board to deal with rates in the West on the hypothesis that the Canadian Pacific is the only Railway that should be taken into consideration."

Similarly, in the Eastern Rates Case, in 1916, the Board there pointed out (Sir Henry Drayton again):

"The Grand Trunk Railway Company was a line primarily built for the necessities of Eastern Canada. It runs into all the large producing centres; it has a well established and well worked up business; and in the territory where the vast majority of the rates in review are in question, does the largest business and obtains the greatest earnings.

There can be no question insofar as Eastern Canada is concerned, that any injustice could possibly be done the shipper in accepting for primary consideration the actual results of the Grand Trunk earnings as a basis of rates,"

and so on. I mention some others.

THE CHAIRMAN: What are the last words:?

MR O'DONNELL: He said:

"There can be no question insofar as Eastern Canada is concerned, that any injustice could possibly be done the shipper in accepting for primary consideration the actual results of the Grand Trunk earnings as a basis of rates."

I am merely saying that through the years the Commission, with the freedom that it has, has picked from time to time different bases for fixing rates.

Now, that is in conformity with the American cases, and I wish to mention just two or three of them.

In the General Commodity Rate Increase Case, 1937, 223 Interstate Commerce Commission Reports, page 657, at page 741, I would respectfully direct the attention of the Commission to these words:

"Long before the enactment of the Transportation Act 1920, the Commission recognized the principle that it could not, with regard to sound public policy, confine its attention to the best situated and most prosperous line or lines, handling the traffic in question, in passing upon the reasonableness of freight rates."

Then again in Receivers & Shippers----

THE CHAIRMAN: That is in the United States.

MR O'DONNELL: Yes.

THE CHAIRMAN: Where there are so many hundreds of railways.

MR O'DONNELL: That is right.

THE CHAIRMAN: And where they are divided up territorially.

MR O DONNELL: That is correct, that is correct.

THE CHAIRMAN: We have in Canada a unique situa-

tion.

MR O'DONNELL: That may be, my lord.

THE CHAIRMAN: When you talk, for instance, of the Canadian Pacific Railway, it is like talking of fifty per cent, nearly, of the railways of the country.

MR O'DONNELL: That is right; I agree entirely, my lord, but I am simply saying---

THE CHAIRMAN: Then that means we have to take special care.

MR O'DONNELL: You will have to take special care, undoubtedly; but I am submitting that the principle of rate-making there is something that the Commission might have in mind, and I would just take a few minutes to give these citations, and the Commission, having them before it, can dispose of them as it thinks best.

In Receivers & Shippers Association v. C.N.O. & T.P. Railway Co., 18 I.C.C. 440, at 464:

"In the Matter of Proposed Advances in Freight Rates 9 I.C.C. Rep. 382, the Commission, having under consideration the rates on grain from Chicago to the Atlantic seaboard, announced that the interests of all competing lines must be considered in determining the reasonableness of those rates, and not merely that line"---

THE CHAIRMAN: The word "competing" is forceful there.

MR O'DONNELL: Yes, my lord; we are competing with the C.P.R.

THE CHAIRMAN: Read it again, please.

MR O'DONNELL: " . . . announced that the interests of all competing lines"---

THE CHAIRMAN: Where was this?

MR O'DONNELL: From Chicago to the Atlantic

seaboard; rates on grain from Chicago to the Atlantic seaboard.

" . . . announced that the interests of all competing lines must be considered in determining the reasonableness of those rates, and not merely that line which could handle the business the cheapest."

THE CHAIRMAN: The cheapest?

MR O DONNELL: Yes. They take all the factors, and I submit that is a sound principle of rate-making.

Again I quote from the same case:

"We must consider the entire situation and determine a reasonable rate not merely with reference to the Union Pacific, but with reference to all lines serving these Colorado points by reasonably direct lines.

We have no doubt as to the correctness of this principle and believe it must be applied here within proper limits."

Then in the Five Per Cent Case, 31 I.C.C. 351, a short excerpt---

THE CHAIRMAN: That last case you have just read would appear to be a contest to lower rates.

MR O'DONNELL: Well, it was a matter of fixing the rates, and the Interstate Commerce Commission said, "We cannot take into consideration merely the railway with the lowest rate, the cheapest rate. We have got to see what the effect is on all the railroads that are competing for that business."

THE CHAIRMAN: Because they were regulating competition. If they gave the lowest rate that was available they would be auctioning the business off to the lowest bidder.

MR O'DONNELL: That is right, my lord. The

quotation from that---

THE CHAIRMAN: How is that applicable to our case?

MR O'DONNELL: Well, I say that we are competing and other roads are competing for business in different parts of Canada, and that to tie the economy of the country to one road is not in the best interests of the country.

COMMISSIONER ANGUS: Mr. O'Donnell, is not the question rather this, that the situation in Canada is unique and distinctive, and your proposals would make it more unique and more distinctive, and in a sense would lower the costs or the apparent costs of one of the two big railway systems? Is not the question really this, that if we recommend your proposals to Parliament, should we at the same time suggest that Parliament give some indication of the effect that it wishes those proposals to have on rate-making, if any?

MR O'DONNELL: That could be.

COMMISSIONER ANGUS: What is to be done in a totally new situation which you propose to create?

MR O DONNELL: That could be. Of course, we look at it in this way, that our proposal is something that should be determined on its own merits as a proposal, as to whether we are entitled to an adjustment of our capital structure. Then we go on to say, in so far as the affairs of our friends are concerned, ratewise, we say section 325 as it stands provides ample protection at the present time. That is all I am saying in my argument at this time. I am saying that it has worked for twenty-five years, and there is no reason why in rewiew it should be thought that the Board would not have in mind the requirements of the C.P.R. and see to it that they get the rates that they have had through the years without any need for an adjustment. We

have not asked to have any change made in rate-making. We do say that if the C.P.R. would like to have rates fixed on the application of the theory of a rate base and a rate of return, the Board today is free to do it; there is no need for any amendment.

THE CHAIRMAN: But you say it would be dangerous.

MR O'DONNELL: Well, to restrict it in that way. We say that it is in the interests of the country that the Board should have---

THE CHAIRMAN: I thought you said it would be a dangerous system for the Board to adopt.

MR O'DONNELL: I say it would not be as proper a method or as satisfactory a method as we have at the present time with the Act as it stands. With the Act as it stands the Board has every freedom required to do exactly what the C.P.R. is asking should be done.

THE CHAIRMAN: The point is, you told me a while ago that in your opinion if the Board did adopt the practice that this amendment suggests it would be a dangerous thing for the Board to do.

MR O'DONNELL: Yes, to tie it to the one method, to tie it to the one method, when it has that method and others at the present time, as far as that is concerned.

COMMISSIONER ANGUS: I think you did tell us you thought it was a wrong way to make rates.

MR O'DONNELL: What I say is, it is wrong to put it in the statute in that way, to stipulate it in the statute. There is no need for it.

COMMISSIONER ANGUS: Your objection is only to the statutory stipulation?

MR O'DONNELL: That is right.

COMMISSIONER ANGUS: It is not to the method in itself?

MR O'DONNELL: The Act as it stands at the present time allows the Board to weigh all circumstances, and it does not restrict the Board to any one railroad and does not tie the economy of the country to any one railroad. It may be that the rates will be fixed on the basis of one railroad, but the Board is free, and I think that is the better way to leave the Board. The Act as it stands, as I said, has been there for a long time and has not affected anybody adversely, and there is no reason to suspect that it would.

In so far as the Act is concerned, we think the Act is all right. Now, if the Board chooses, in the exercise of its unfettered discretion, to adopt that method of fixing rates, that is correct, but, on the other hand, to tie the Board to that is, we think, wrong, to put it in the statute, when the statute particularly today includes that power if the Board thinks it is in the best interests of the country that it should be done. But it would be wrong, we think, to cut down the unfettered powers of the Board and to restrict it and hedge it about in the way Mr. Evans pointed out the I.C.C. was hedged about with a number of complex---

MR EVANS: I don't think I said that.

MR O'DONNELL: Now, Mr. Evans, you asked me to be good enough not to interfere with you yesterday.

MR EVANS: Please don't misstate what I said.

MR O'DONNELL: Well, I gave your words, and we will leave it at that; the record will speak for itself.

I just wanted to put two other short extracts or references on the record. In the Five Per Cent Case, 31 I.C.C. 351, at page 384:

"The financial condition of the various railroads composing the 35 systems" --

I agree, in Canada we have only two, and they compose possible fifty per cent, or roughly, although the C.N.R. has about a third more, I think, any way one looks at it --

"The financial condition of the various railroads composing the 35 systems varies greatly, as disclosed by their net corporate income as well as by their net operating income. The condition of some of them is so prosperous that they clearly do not need a higher net income; the condition of others is such as to preclude the expectation of a return upon outstanding capital stock or the possibility of raising much additional capital without a thorough reorganization."

Again, at page 386:

"Treating as one road the 35 railway systems that have joined in this application for our approval of a so-called 5 per cent advance in their freight charges"---

THE CHAIRMAN: What region was concerned in that, the 35 railroads?

MR O'DONNELL: I have not got the reference. It is some little time since I looked it up. But the 35 railroads were---

THE CHAIRMAN: You see, because there are 131 major railroads.

MR O'DONNELL: That is correct.

THE CHAIRMAN: And this is only 35.

MR O'DONNELL: This is one section, there is no question about that. Ex Parte 168 and the others group the railways. But they do not take any particular one, and that is the point, that it is the over-all---

THE CHAIRMAN: What do they say?

MR O'DONNELL: " . . . we have reached the conclusion that their net operating income is insufficient and

should be increased."

But they did not just take the richest one or the one that was the best situated; they looked at the entire picture.

THE CHAIRMAN: How did they refrain from increasing the rates of the richest one?

MR O'DONNELL: Well, they struck a rate that everybody had to take, and it was not based on any one railroad's position, but it was on weighing of all the circumstances, and they tried to do justice to the transportation system as a whole. That was what had to be kept in mind.

THE CHAIRMAN: Can you tell us what the object of the application was?

MR O'DONNELL: In this case?

THE CHAIRMAN: Yes.

MR O'DONNELL: Well, it was to increase rates by 5 per cent.

THE CHAIRMAN: Where?

MR O'DONNELL: Offhand, my lord, -- I am very sorry, but, as I say, it is some time since I wrote these notes, and I will have to ask the Commission---

THE CHAIRMAN: That is, 35 railroads joined in asking for a 5 per cent increase; is that it?

MR O'DONNELL: Well, there were 35 railroads asking for an increase, and the Commission looked at the over-all picture of the whole 35; it did not take the richest or the poorest; it regarded the situation as a whole and struck a rate which it thought would do justice in the circumstances.

THE CHAIRMAN: And granted a 5 per cent increase?

MR O DONNELL: Yes.

Just one other short extract from that same

report:

"While Section 15-A of the Interstate Commerce Act hereinbefore quoted, is not now in the form in which it was originally enacted in the Transportation Act, 1920, and no longer contains the provision for the recapture of excess earnings, it still clearly recognizes the principle that we must, in prescribing just and reasonable rates, consider the needs of the railroad transportation system as a whole, by its insistence upon the 'need, in the public interest, of adequate and efficient transportation service' and the 'need of revenues sufficient to enable the carriers under honest, economical and efficient management, to provide such service'. As we found by practical experience, long before there was any section 15a, 'adequate and efficient transportation service' cannot be provided, and revenues sufficient for that purpose cannot be supplied, if attention be confined to the earnings of the best situated and most properous railroad companies."

Now, the measure of the needs of the railways---

THE CHAIRMAN: Well, I suppose that is a self-evident truth, isn't it?

MR O'DONNELL: Yes, I think so.

THE CHAIRMAN: That the most prosperous railway would have certain rates, and, as it is very important in the interests of the whole country to have efficient transportation services everywhere they are required, you cannot select one railway that happens to run through an exceedingly wealthy part of the country and say, "Well, what is good enough for them is good enough for the rest."

(Page 24363 follows)

Mr. O'DONNELL: That is right, my lord. All I am saying is that this amendment is really directed to selecting one railroad. I say the measure of the needs of the railways must be what is just and reasonable to all who have any interest in the operation of the railroads, the carriers, shippers and the public. I respectfully suggest that the economy of the country should not be tied to one particular road or another but that the Board should be given and allowed to continue to have the freedom which it has had through the years to establish just and reasonable rates, and to rely upon their doing as they have done in the past.

COMMISSIONER ANGUS: Do you consider that the needs of the Canadian Transportation system taken as a whole are altered by your proposal or not?

MR. O'DONNELL: No, I do not think they are, because our proposals, as we have said from the beginning, were not drafted with a view to effecting rate-making in any way. What we were endeavouring to do was some internal housekeeping and to adjust our capital structure. As and when we go to the Board of Transport Commissioners, whatever the face of our capital structure may be, the Board using the powers that the law allows it will fix just and reasonable rates taking intoconsideration all the factors that enter into the making of just and reasonable rates, and they are many. It is not merely the rate base.

COMMISSIONER ANGUS: You have not changed materially one of those factors?

MR. O'DONNELL: Not in so far as rate making is concerned. We are quite satisfied if our proposal is put into effect it will have no bearing whatsoever on rate making. The rate making function of the Board is there, and the Board, having regard for the transportation

system of the country, the needs of the public, the needs of the railways, not one railway but the whole array of them, will fix whatever rate is just and reasonable under all those circumstances.

THE CHAIRMAN: That is to say that the position of your capital structure has nothing to do with rates?

MR. O'DONNELL: That is our contention, my lord. That is what we have said constantly and that is what we still say. At this point before this Commission under your order in council you are directed to review our capital structure and --

THE CHAIRMAN: That is true enough but I am asking whether you say whatever we may do to your capital structure will have any effect at all on rates?

MR. O'DONNELL: I say the Board of Transport Commissioners can disregard that entirely.

THE CHAIRMAN: That is a different thing.

COMMISSIONER ANGUS: It can but will it? Will your apparent needs be altered if your proposals are given effect to?

MR. O'DONNELL: I say again we have not asked for any change in the basis under which the Board deals with rates. The Board has the broadest possible powers. We have not asked for any change in those powers. I say this problem at this point does not relate to rate making, and that what we are asking does not effect the Canadian Pacific at all. It is a matter of internal administration as to whether we, with the consent of our owner, will have one type of capital structure or another, as to whether we will have more bonds or less bonds, more equity stock or less equity stock. That is all it amounts to.

THE CHAIRMAN: Would your requirements not vary with all this?

MR. O'DONNELL: Our requirements vary?

THE CHAIRMAN: Yes, every time you go to the Board your requirements have been different. Your requirements vary according to the handling of your capital.

MR. O'DONNELL: What has varied in our case has been our operating costs.

THE CHAIRMAN: I am asking you the question and I would like you to answer it. Will your requirements not vary?

MR. O'DONNELL: When you say "requirements" just in what way --

THE CHAIRMAN: You have told me that your capital structure will have no effect at all on the fixing of rates.

MR. O'DONNELL: I think that is right.

THE CHAIRMAN: And you had a case you quoted to us where the chairman of the Board on a former occasion said they would have to consider the requirements of your railway.

MR. O'DONNELL: They look at the needs of all the railroads but they are not restricted as to what aspect they look at it from or what point of view, as to whether it is interest or earnings. What we have asked them for in the last few years is a change that would help to overcome the increase in the costs of operation. We have pointed to the increased costs of operation and we have asked them to adjust rates on those bases. We respectfully submit at this stage, however, that under the direction to the Commission you can review our capital structure on its own merits, and that you can do that without in any way trespassing upon the functions of the Board of Transport Commissioners in fixing rates.

COMMISSIONER ANGUS: Mr. O'Donnell, my attention

has been called to the 21% judgment in which I see at page 35 the requirements of the Canadian National Railways were stated in precise figures, $61,522.000.

MR. O'DONNELL: Yes.

COMMISSIONER ANGUS: Would those requirements be stated at the same figure if effect was given to your proposals?

MR. O'DONNELL: Naturally there would be changes. There would be less interest-bearing debt and more equity.

COMMISSIONER ANGUS: Won't the Board of Transport Commissioners consider your requirements?

MR. O'DONNELL: They could look at the situation as it would stand but that does not mean to say that they would necessarily fix rates on that basis.

THE CHAIRMAN: Whatever rates they fixed you would get them.

MR. O'DONNELL: We would get the rates, yes.

THE CHAIRMAN: And you have said they would consider the requirements of both railways.

MR. O'DONNELL: As I understand it they look at the over-all picture, the needs of the railways and the shippers.

THE CHAIRMAN: The requirements of one railway might indicate to the Board that perhaps rates ought to be lowered and not increased.

MR. O'DONNELL: I submit respectfully at that point the Board will bear in mind that the Canadian Pacific, with its need to pay income taxes and dividends, has to be given weight to just as they have in the past. I have no fear that the Board will not continue to act as the buffer for which it was created to act as between shippers and the railways.

COMMISSIONER ANGUS: What the Board has called the

mean between the railways might be somewhat different if the requirements of your railway have been greatly reduced. I mean by requirements what the Board calls requirements.

MR. O'DONNELL: That may be but on the other hand I have faith in the Board that so long as the country has to have the Canadian Pacific as a railway enterprise, in my respectful view the Board is undoubtedly going to see to it that they get what is needed to keep them in a position where they will be able to carry out their function as such railway enterprise. They have always provided them with their operating expenses, their fixed charges, their dividends, income tax and a reasonable surplus for additions and betterments or to come and go on. They have done that, and I have not any idea that they are going to stop doing it. I say the Commission can quite well recommend an adjustment in the capital structure of the Canadian National which after all at this stage is a matter between the owner and the company, without in any way upsetting the rate-making functions of the Board of Transport Commissioners. When we get back to the Board of Transport Commissioners the situation of the Canadian Pacific is fully understood there.

COMMISSIONER ANGUS: You do not change the functions but it might change the conclusions they came to if what they have been calling your requirements were actually reduced by a statute to something lower than they had been before.

MR. O'DONNELL: Yes.

COMMISSIONER ANGUS: The requirement is something that the Board has to take into account.

MR. O'DONNELL: The Board could take that into account under the statute as it stands.

COMMISSIONER ANGUS: Would not the natural and probable consequence of your recapitalization be something that changed the rates?

MR. O'DONNELL: In my respectful view that could only be predicated upon the failure of the Board to take into consideration the needs of all railways, and that includes the Canadian Pacific at that point. The Canadian Pacific has to have its needs in addition to what the nationally owned road has. The Board fully understands that, and has always seen to it that the roads have been provided for, especially in the years since 1920. I do not think there is any reason to think they will stop doing that. That is my point. Under the statute as it now stands they can do that, and there is no need to alter it no matter what might happen to the internal bookkeeping of the Canadian National.

I had intended to leave that aspect of the matter, the amendment of section 325. There was one other point to which Mr. Evans referred as being one of the things to which he asked the Commission to direct its attention. The first was the amendment of section 325 and the second was the matter of income bonds which Mr. Evans referred to at page 24306. I have already argued this aspect of the suggestion of the C.P.R.

THE CHAIRMAN: There has been so much said, and in order that we may get our bearings, according to your submission what would be the position of your company towards the government from now on? Would it remain the same as is set out in section 10 of the Act?

MR. O'DONNELL: Yes, my lord, that is right.

THE CHAIRMAN: That is what would happen. The directors of the Canadian National Railway Company may cause to be paid over to the minister for the consolidated

revenue fund all or any part of such surplus earned.

MR. O'DONNELL: Yes, my lord. I was about to say as to that that Mr. Evans'second point is directed to this matter of income bonds. As I say, in my argument the other day I reviewed our approach to that subject and explained why, in the view of the Canadian National, income bonds were not the answer in our case, that a simple division of the capital into two classes, interest-bearing debt represented by bonds outstanding in the hands of the public and equity stock wholly owned by the government, was all that was needed to handle the situation. Under the statute as it stands at the present time the directors of the Canadian National, I submit, are in the same position as those of the C.P.R.

Moreover, even as Mr. Northey Jones put it dealing with retained earnings -- dividends, additions and betterments and so on, that is a matter for the directors of the company. At page 20426 Mr. Northey Jones said:

> "It is one of the functions of directors to exercise careful judgment to determine the amounts of net earnings which are to be declared in dividends and the remaining amounts of net earnings which are to be retained for investment in the enterprise."

THE CHAIRMAN: Who said that?

MR. O'DONNELL: Mr. Northey Jones.

THE CHAIRMAN: He was talking of companies in general?

MR. O'DONNELL: Yes.

THE CHAIRMAN: Where, of course, the directors are accountable to their shareholders and the shareholders expect dividends.

MR. O'DONNELL: Our directors are accountable

also just as the directors of any ordinary company.

THE CHAIRMAN: In an ordinary company the directors have the shareholders watching them and wanting dividends. You would not have that.

MR. O'DONNELL: Well, I don't know. I respectfully submit --

THE CHAIRMAN: The statute does not say that the government has anything to do with it.

MR. O'DONNELL: All I am saying is that the situation is identical with that of the directors of the Canadian Pacific and the directors of all corporations, that the matter of the declaration of dividends, the matter of the amount of retained earnings to be plowed back into the company, are matters for the exercise of the discretion of the directors. In that connection I should like to refer to an extract from the Drayton-Acworth Report where, speaking of the trustees who were to operate the Dominion Railway Company, which is the Canadian National Railways, they say at page lxxii under the heading "Wide powers to be given the trustees." This is what they recommended:

> "We consider, subject to the jurisdiction of the Railway Commission, the Trustees should have the widest powers in the management of their undertaking."

Further they say:

> "They must have discretion" --

THE CHAIRMAN: That is the point, in the management of their undertaking and subject to the direction of the Board.

MR. O'DONNELL: That is right. Then they go on to say:

"They must have discretion to say how far net profits are imperatively required for railway purposes and how far they may be safely taken to pay a dividend on the share capital. In a word, we would entrust to the Trustees all the responsibilities and powers which, in an ordinary company, are divided between the directors and the shareholders. We believe that the desire to render the best possible account of their stewardship to the people of Canada will be a sufficient motive to induce them to manage the railways efficiently and economically."

As originally recommended the Board of Directors or Trustees, as they were then called, were to be given the widest powers in administration. They were to have discretion to say how far net profits are imperatively required for railway purposes and how far they may be safely taken to pay a dividend on the share capital.

"In a word, we would entrust to the Trustees all the responsibilities and powers which, in an ordinary company, are divided between the directors and the shareholders."

That was the original intention, and I say that is reflected in section 10 of the Canadian National Capital Revision Act to which your lordship has just referred. That is exactly the situation. It is the same situation that the Canadian Pacific directors are in, and it is the same situation the directors of any company are in.

COMMISSIONER ANGUS: Would you go so far as to --

THE CHAIRMAN: You said the same position that the directors of any company are in. Have you not noticed that the report you have before you says that in this case the trustees, as they were then called, were to have all

the functions both of the shareholders and of the directors of ordinary companies.

MR. O'DONNELL: That is right; that is correct.

THE CHAIRMAN: Both of the shareholders and of the directors.

MR. O'DONNELL: "In a word, we would entrust to the Trustees all the responsibilities and powers which, in an ordinary company, are divided between the directors and the shareholders."

THE CHAIRMAN: There would be no division in your case.

MR. O'DONNELL: No.

THE CHAIRMAN: Is that not a distinction between you and an ordinary company?

MR. O'DONNELL: All I am pointing to --

THE CHAIRMAN: That is very important.

MR. O'DONNELL: All I am pointing to is that --

THE CHAIRMAN: Just a minute. In an ordinary company the shareholders are there and they have rights, interests and responsibilities, and the directors have theirs.

MR. O'DONNELL: Right.

THE CHAIRMAN: Under the language you have read from that report there would be a difference made in this company in that the Trustees, as they were then called, would have all the powers and rights not only of directors but of the shareholders.

MR. O'DONNELL: Yes.

THE CHAIRMAN: There is a difference. You say that all-absorbing power which under this report is intended to be vested in the trustees is now vested in the directors of your company under this section.

MR. O'DONNELL: I say merely this --

THE CHAIRMAN: You do not wish to admit that there is a difference between you and ordinary companies when it is right there on the face of it?

MR. O'DONNELL: I am sorry, all I am saying is that as originally intended the Trustees were to have all the powers of directors and shareholders.

THE CHAIRMAN: Yes.

MR. O'DONNELL: Even broader than they have today.

THE CHAIRMAN: You said the directors had the very same powers today.

MR. O'DONNELL: I submit respectfully that under section 10 they have thesame powerstoday as the directors of the C.P.R. have under their charter. They have the same powers as the directors of any corporation have, to manage the corporation, declare or not declare dividends, hold part of the earnings or not hold them, plow them back into the company or not.

THE CHAIRMAN: That really is not the point. You are departing from the point. You read the Drayton-Acworth Report which said that the Trustees should have not only the powers of directors but also the powers of shareholders.

MR. O'DONNELL: That is right.

THE CHAIRMAN: Then you went on to say that your directors have inherited all these powers of directors and shareholders just the same as in the case of an ordinary company.

MR. O'DONNELL: Before I come to that I want to say that in the interval the statutes have been changed. The Drayton-Acworth recommendations were not accepted to the letter in all instances. The recommendation they made was that the trustees would have all the powers that ordinarily are vested in directors and shareholders, but

as the statute stands today I am simply saying that under Section 10 the directors have the same powers as the directors of the C.P.R.

THE CHAIRMAN: They have not got what the Drayton-Acworth Report contained?

MR. O'DONNELL: No, because that report was not accepted in all detail, and section 10 represents the situation as it is today. The shareholder today under the Act is the governor in council and the governor in council by order in council acts as shareholders would have to act. All I am saying is that as the Drayton-Acworth Report would have set it up the Trustees would have had the broadest possible power. I say that today under section 10 the division is between the directors and the only shareholder, the Government.

THE CHAIRMAN: Under the Drayton-Acworth recommendation would the Government not have been the owner?

MR. O'DONNELL: The Government would have been the owner but the recommendation of the Drayton-Acworth Report was that there would be a self-perpetuating board of trustees, and the government would not have anything to do with re-appointing the trustees once they had been in office. They would appoint other trustees to follow themselves, and so on. In that instance the report was not acted upon in the way it was recommended. Today we have directors instead of trustees, and I say that as the statute stands the directors are given the same powers as the directors of any other corporation, including the C.P.R. They have the same powers.

THE CHAIRMAN: Suppose the government were to approach your directors at the end of the year and say, "We think you ought to give us 50 per cent of your surplus." Could you not point to the Act which is superior

to the government?

MR. O'DONNELL: Well --

THE CHAIRMAN: Pardon me a moment. Could you not say, "We will not give you 50 per cent of our surplus. Under section 10 of the Act we are to decide what we are to pay over to the minister and we do not think we should pay you anything." You would have the statute with you there.

MR. O'DONNELL: All that would happen there --

THE CHAIRMAN: You would have statutory protection.

MR. O'DONNELL: That is true, but if the shareholders determine that the action of the directors is not to their liking what do they do? They remove the directors. What would the Government do as the shareholder? It would remove the directors.

THE CHAIRMAN: It is parliament that passed the statute.

MR. O'DONNELL: That is correct.

THE CHAIRMAN: That is your answer to the Government. "We do not have to listen to you at all. Parliament says that is our duty."

MR. O'DONNELL: That is right but Parliament also said --

THE CHAIRMAN: Those are the facts, and unless we get them clearly and admittedly we do not get anywhere. The statute says that your directors are to be the ones to decide whether or not any part of your surplus is to be paid to the Minister, and the Government has nothing at all to say. That is the fact today.

MR. O'DONNELL: The fact today --

THE CHAIRMAN: That is the statute.

MR. O'DONNELL: I agree that section 10 says

that but I also say --

THE CHAIRMAN: You want the statute to remain that way?

MR. O'DONNELL: Yes, I am satisfied that the statute should remain that way.

THE CHAIRMAN: Although you might have deemed it advisable, in view of the recast of your situation to have in your own interests some compulsion on you to confer with the government and allow the government to have something to say about what you were going to do with your surplus from time to time.

MR. O'DONNELL: There is no need to change it at all. We are satisfied with it as it stands. I say from a practical point of view the Government is the only shareholder of the Canadian National --

THE CHAIRMAN: I know. We all know who is the owner. Here is a statute that overrides both the owner and you.

(Page 24378 follows)

THE CHAIRMAN: I know. We all know who is the owner.

MR. O'DONNELL: All I am saying is this - -

THE CHAIRMAN: There is a Statute which overrides both the owner and you. That Statute says that the owner has nothing to say about what you are to do with your surplus, that you are the ones to say.

MR. O'DONNELL: The Statute as it stands today is permissive.

THE CHAIRMAN: You are the ones to say. You are the Directors. You are the sole body who can determine what is to become of your surplus, whether any part of it is to go into the consolidated revenue. Is not that so?

MR. O'DONNELL: That is true under Section 10.

THE CHAIRMAN: You say you want it to remain that way?

MR. O'DONNELL: I do say that the Government is not without its recourse as the owner. It is a shareholder.

THE CHAIRMAN: The Government might ask Parliament to change the statute.

MR. O'DONNELL: And the Government might also change the Board of Directors. It is the shareholder. It might change the Board of Directors if it did not like the way it was acting, just the way the shareholders of the C.P.R. changed the Directors of the C.P.R. That is my point.

THE CHAIRMAN: I do not think your comparison is fair because here is a power conferred upon the Directors by Statute and it is their duty to carry out that power to the best of their ability.

MR. O'DONNELL: That is right.

THE CHAIRMAN: Even if the Government does try to interfere with it, they have the Statutes there.

MR. O'DONNELL: There is no question about that.

THE CHAIRMAN: The Government cannot interfere with them without getting Parliament to change the Statute.

MR. O'DONNELL: If that were the only statute on the books and the only provision were Section 10, I would agree entirely, but there are other sections that have to be taken into consideration and under the other sections a shareholder is in control of the situation.

THE CHAIRMAN: I beg your pardon?

MR. O'DONNELL: In the other Sections the shareholder is in control of the situation just as the shareholder is in control of the C.P.R.

THE CHAIRMAN: And that is as to changing Directors?

MR. O'DONNELL: Yes, as far as that is concerned. So that effectively and practically it is the same thing.

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Recess

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THE CHAIRMAN: All right, Mr. O'Donnell.

MR. O'DONNELL: May it please the Commission, I would just like to say a few more words on the point we were last discussing. I should merely like to say that under the Statutes governing the Canadian National, as they stand today, we are not asking for any change in them. We are merely pointing to it that there is the one Director, and that is the Minister of Finance, acting

for the owner really of the road, the people of Canada. With the obligations of the Directors as set out in Section 10 and in the other sections of the Act are virtually the same as those given to the Directors of ordinary companies . I think, on a reading of the Act and on a consideration of the Statutes that that will be found to be the situation

THE CHAIRMAN: Has any controversy ever arisen over Section 10?

MR. O'DONNELL: No, my lord: not to my knowledge. I think that on readoingthe Act as a whole and the Statutes, the C.N.R. Act itself, the Canadian National-Canadian Pacific Act, where other provisions are found concerning the set up of the company, that it will be found that our Directors have the same powers as the Directors of ordinary companies, with this one thing, that we have the one shareholder and it is therefore easier for the one shareholder to act expeditiously and quickly than it is for the shareholders of a company with thousands of shareholders. So far as surplus earnings are concerned, we say that the provision as it stands is adequate. I say simply this. Mr. Cooper pointed out at page 18946 that there was no bar against the pay out of any surpluses that there might be, as had been suggested to him by Mr. Evans, and at page 18947 the following question and answer make the situation quite clear:-

"Q. And, whatever the surplus may be, there is nothing to indicate that at any stage, no matter how large the surplus, there would be any pay out to equity security holders?

"A. It may not say that, but I think

it is quite reasonable, that if the surplus earnings were so good, after providing for capital and some transfer to a reserve, that there was still a sizeable amount of money left, it would be turned back to the Government."

THE CHAIRMAN: Who said that?

MR. O'DONNELL: Mr. Cooper.

COMMISSIONER ANGUS: Would you definitely object to Section 10 being made more explicit in the sense of using some language like "imperatively needed"?

MR. O'DONNELL: I think that Section 10, as it stands, provides that.

COMMISSIONER ANGUS: I say would you object to its being made more explicit if it does provide that now.

MR. O'DONNELL: I would of course, want to see what the extent of the change was. I have no mandate, of course, at this time to agree to any change. We have no proposal to make in connection with that. We think our Directors should have the same broad powers that the Directors of other companies have, and that they should not be restricted in their judgment as to what is good for the railroad, in the event that there might be surpluses which we think fairly unlikely, as to whether or not some portions should be plowed back into the property and the balance paid out. That is something we think can safely be left with those men who are able, experienced business men and who are administering the property according to their best judgment. That is our attitude. We think that the Statute as it stands gives them the fullest discretion and authority to do what is best for the Canadian National

in any given circumstances.

COMMISSIONER ANGUS: The reason why people are doubtful about it being something that can be safely left to them is the proposal of Mr.Gordon which you eventually withdrew. That seemed to show that they might contemplate something rather different. Section 10 would leave them free to do that. Is it so unlikely that they would do it that that can be disregarded?

MR. O'DONNELL: SO unlikely that they would do what, Dr. Angus ?

COMMISSIONER ANGUS: You withdrew the proposal for a rate stabilization fund being created out of this surplus.

MR. O'DONNELL: I do not know that I quite see the point. All I say is that as it stands today, they are entitled to use their best judgment in the interests of the railroad as to what should be done.

COMMISSIONER ANGUS: Yes.

MR. O'DONNELL: Is it the intention to restrict the use of their judgment?

COMMISSIONER ANGUS: No. The Drayton Acworth report that you read suggested that the directors or trustees might retain what they thought was imperatively needed for railway purposes.

MR. O'DONNELL: Yes.

COMMISSIONER ANGUS: And Section 10 leaves the matter so unrestricted that they might retain, first, what they thought was imperatively needed for railway purposes and second in addition, what they thought was useful as a rate stabilization reserve, or something of that kind. You say now that there is no danger of their doing anything that is not imperatively needed, and that therefore Section 10 need not be amended. All I am saying is that some

people thought there might be a danger there in this proposal about the stabilization reserve which was eventually withdrawn.

MR. O'DONNELL: My frank view is that the act as it stands is adequate to take care of all eventualities.

THE CHAIRMAN: Do not overlook this fact. Originally your plan did contain this proposal with regard to surpluses in building up a fund, and so on. You will remember that there were certain reactions to that.

MR. O'DONNELL: We ask that ---

THE CHAIRMAN: Just a minute. There were certain reactions, adverse to your proposal.

MR. O'DONNELL: That is right.

THE CHAIRMAN: Not only from the Canadian Pacific.

MR. O'DONNELL: Yes.

THE CHAIRMAN: That got to the public. There it is. When you withdrew that part of your plan you retained, under Section 10, the power to do that very thing which ostensibly you were withdrawing. Is that not so?

MR. O'DONNELL: No, my lord, I do not think so.

THE CHAIRMAN: Does that Section 10 allow you to do anything?

MR. O'DONNELL: Yes; and we do not ask for any change.

THE CHAIRMAN: I beg your pardon?

MR. O'DONNELL: We do not ask for any change.

THE CHAIRMAN: I know you are not asking for any change.

MR. O'DONNELL: That is right.

THE CHAIRMAN: But by retaining Section 10 as it is, you retain the power to do all that you proposed to do under that part of the plan which you later on withdrew.

MR. O'DONNELL: Well, I would just like ---

THE CHAIRMAN: Is that not so?

MR. O'DONNELL: I cannot answer that yes or no, categorically.

THE CHAIRMAN: All right.

MR. O'DONNELL: I want to say this, that it was not part of the plan. We asked for a recommendation only from the Commission. We did not ask for any statutory amendment. Having said that, I agree that Section 10 is broad and gives the directors the power to do what the directors of any company have the right to do. I agree with that.

THE CHAIRMAN: Yes. It gives the directors power to do what you suggested at the beginning we should recommend they be able to do if they wanted to.

MR. O'DONNELL: That among others, yes.

THE CHAIRMAN: And onthe other hand, you resent the intrusion of inoome bonds.

MR. O'DONNELL: Yes.

THE CHAIRMAN: Do you not think that in your own interests, having regard to the position you may find yourselves in in the future, that it would be well if Section 10 did show that there was some accountability, some necessary accountability, between the directors and the minister, each year with regard to surpluses.

MR. O'DONNELL: We think, on a full consideration of the statutes as a whole, not just one sentence, that there is that right now.

THE CHAIRMAN: All right.

MR. O'DONNELL: We think there is that control, because your lordship will remember that whenever the shareholders have to act in so far as the Canadian National are concerned, provision is made for that in Section 11 of their Act. I think that on a consideration of the over-all statutory powers governing the Canadian National, that your

lordship would come to the conclusion that there is ample coverage there now.

THE CHAIRMAN: That may be.

MR. O'DONNELL: Yes. I do not think that just taking Section 10 alone, one gets the full picture.

THE CHAIRMAN: I do not know what you mean by ample coverage. In the next sentence you say that the directors are altogether free and should be left altogether free. That is what you say.

MR. O'DONNELL: Yes. We say we do not see any reason for changing that. That is our view.

THE CHAIRMAN: All right.

MR. O'DONNELL: The Commission may have other views. I am not saying that there are not other views.

THE CHAIRMAN: I just want to make sure that we are getting your views.

MR. O'DONNELL: Our view, frankly, is that Section 10 which has been there for quite a longwhile, is adequate. It does not give us any powers that other directors have not got. We have the identical powers that the C.P.R. directors have. There is no difference.

THE CHAIRMAN: There is no use of going over that again. You do not want any change in Section 10.

MR. O'DONNELL: I have no instructions to ask for any change, and we have not asked for any.

THE CHAIRMAN: All right.

(Page 24388 follows)

Now, the objection is put forward that there is no obligation to make a pay-out, as it was put, and all I was saying as to that was that there is no bar against the pay-out. If we have a surplus there is no bar against paying out; it can be paid out. I point to the evidence of Mr. Cooper in that respect, where he was examined by Mr. Evans:-

"Q. And, whatever the surplus may be there is nothing to indicate that at any stage no matter how large the surplus, there would be any pay out to equity security holders?

"A. It may not say that, but I think it is quite reasonable, that if the surplus earnings were so good, after providing for capital and some transfer to a reserve, that there was still a sizeable amount of money left, it would be turned back to the Government."

Again, at page 18957, the following exchange puts the matter beyond question, in my respectful submission:-

"Q. May I ask you this, whether you do not construe that language in Mr. Gordon's statement as in effect a bar to payment of some part of this surplus to the Government.

"A. I don't construe it so and I am sure he doesn't."

COMMISSIONER ANGUS: Was that question and answer before the proposal about the stabilization fund was withdrawn, or afterwards?

MR. O'DONNELL: It was during Mr. Evans' examination of Mr. Cooper.

COMMISSIONER ANGUS: I think that was before.

MR. O'DONNELL: That may be, but I would respectfully say that, whether it was before or after, the situation is the same; it does not make any difference; the answers would be the same.

Then the next question and answer were as follows:

"Q. Have you any view as to when the point would be reached at which such a surplus would be paid to the Government?

"A. I think that point is so far removed that it is not worth discussing."

Then Mr. Fairweather, in Vol. 111, at page 20342, testified as to what might be done in the circumstances where surpluses were available to be disposed of:-

"I think that would be a matter first in the discretion of the Board of Directors of the Canadian National, and secondly a matter of concern to the shareholder. You can hardly expect me to say that might happen in some hypothetical situation that I cannot see as probable although I say it is conceivable. I think it would be a conceivable idea that if such a surplus did exist it would be a reasonable matter for consideration of the Board of Directors of the Canadian National Railways to turn over some of it to the Government, and if they did not elect to do so I consider it conceivable that the shareholder would say to them, 'Now, we are not satisfied with the way you are dealing with this thing and we will have something to say about it in our annual meeting.'"

The situation would be handled by the C.N.R. Directors with the same freedom for the exercise of their business judgment in fulfillment of their duty, as the Directors of the C.P.R. likewise do.

Now, that is the situation, and we think there is no reason for changing it. We think there is reason for restricting the powers of the Directors to administer the property in its best interests, retaining whatever surplus there might be in the event that there may be, and the possibilities as to that the Commission has heard.

COMMISSIONER ANGUS: Would the creation of the stablization reserve delay applications for rate increases? Would not the Board of Directors of the Government Railway have perhaps more incentive to establish a reserve for that purpose than the Board of Directors of a privately-owned railway? Is there not a difference there that is appreciable?

MR. O'DONNELL: Well, so long as rates are fixed as they are, we only get the proceeds of the rate when our chief competitor has had its - -

COMMISSIONER ANGUS: When you apply for it?

MR. O'DONNELL: Yes.

COMMISSIONER ANGUS: And I understood this was to delay the date of application.

MR. O'DONNELL: Well, if you are talking about the stabilization fund now, I thought that was gone. I agree that the Directors have the broadest powers to use the proceeds of the rates.

COMMISSIONER ANGUS: I agree with that, Mr. O'Donnell, but is not the discussion which you are quoting a discussion which took place before it was withdrawn? I think you said it was.

MR. O'DONNELL: Well, Mr. Fairweather I do not think was; the other one, Mr. Cooper, I think was. But I say the answer would be the same in any event. There is no need to change; that is our submission.

THE CHAIRMAN: I thought perhaps you had some suggestion to make in view of the reaction which your proposal caused, as I said a moment ago, not only to the Canadian Pacific but immediately, for instance, to the representative of the Government of Alberta and the representative of the Government of Saskatchewan too. That is right, Mr. MacPherson, is it not?

MR. MacPHERSON: Yes, that is right.

MR. O'DONNELL: Yes, they reacted.

THE CHAIRMAN: Well, there you are. Now, you have withdrawn your request that we recommend that you do that.

MR. O'DONNELL: That is right.

THE CHAIRMAN: But you have drawn attention to the fact by that request that you have full power to do all that now under Section 10.

MR. O'DONNELL: We always had - -

THE CHAIRMAN: I thought that perhaps you would yourselves welcome some restraint or some limitation, in view of what you are asking for in the way of facilities to make more money, to make it clear that there is to be an accountability between you and the owner, the Government, in respect of your surpluses.

MR. O'DONNELL: Well, my lord - -

THE CHAIRMAN: That is your view?

MR. O'DONNELL: Yes, but we really think there is what you call an accountability.

THE CHAIRMAN: Oh, yes, under the general provisions, of course, there is. They could dismiss their

directors
/any day they liked.

MR. O'DONNELL: That is right, just the same as the Directors of any ordinary company.

THE CHAIRMAN: Would it not reassure those who might have any fears if this section 10 showed on the face of it that there is to be each year a consideration of what is to be done with surpluses, not only among the Directors themselves, but their owners?

MR. O'DONNELL: Well, my lord, as far as the Commission is concerned, of course it can make any recommendation it wishes.

THE CHAIRMAN: We are not forgetting that. We will have our responsibility when the time comes. We were just canvassing now the possibility of the company seeing that point as we see it, at least as I see it.

MR. O'DONNELL: The point of course will not arise unless there are extensive surpluses, and our assessment of that possibility is as the evidence has put it.

We have not asked for any change in the law; we are satisfied with the statute as it is. On the other hand, I know you have not forgotten your responsibilities, either.

COMMISSIONER ANGUS: Could we go so far as to say that your proposal would make surpluses a little more likely than when Section 10 was originally drafted?

MR. O'DONNELL: Well, I suppose there would be a change in the situation, there is no doubt about that, in so far as having to find interest is concerned; but as to the proceeds of the rate, there would not be any difference in the way that is acquired. We have not asked for a change in the rate-making aspect; we only get the proceeds of the rate that the Board fixes.

COMMISSIONER ANGUS: I thought perhaps the surpluses would be more likely because you would have less interest to pay before you got a surplus.

MR. O'DONNELL: We would have to divide the proceeds of the rate in a different way. We would have fewer bonds and more equity stock, that is true.

COMMISSIONER ANGUS: Yes, but the surplus arises before you pay anything on the equity stock.

MR. O'DONNELL: That is right, but there is no surplus until you have paid your interest, I suppose. In any event, we have not asked for any change, and we leave it at that. We think the statute as it is at the present time is sufficient.

Now I would just like to say a few more words. I read again from what Mr. Evans, at page 24264, said:

> "We have no objection if the fixed charges are reduced as proposed as long as certain other things, which I am going to mention, are done;"

Now, I have gone over the two things which he mentioned, and those were by way of providing protection such as the C.P.R. thought it should have in the event that

this change I would ask for is being made.

It is my respectful submission, my lord and members of the Commission, that the C.P.R. at the present time is fully protected against the various fears that they had or have in connection with our proposals.

Firstly, the Commission will bear in mind that as to capital expenditures the Canadian National cannot make any without the consent of Parliament -- C.N.R., section 21, and C.N.-C.P.Act Section 12.

Secondly, the C.N.-C.P Act also protects the C.P.R. against unwarranted duplication of facilities and competition -- section 17 (3) (c), volume 114,page 20759-A.

Thirdly, we respectfully submit that the C.P.R., when the rates are under the jurisdiction of the Board, are protected from a rate war or rate cutting; that is something that is not at all a practical matter, and if rates were unreasonable and not compensatory as put in by the Canadian National, and they were affecting the Canadian Pacific in a competitive way, application could be made to disallow them. The Board disallowed competitive rates, for instance, during the 21% case.

Lastly, I say that the Board protects the revenues, the requirements of the C.P.R. by reason of its obligation to fix just and reasonable rates at all times. The Supreme Court here in December last made it very clear that that was the Board's function and duty, and I think that the Board will at all times be mindful of the requirements of the C.P.R. They have been for some fifty years, since 1903 roughly, and in the circumstances, under the statutes as they stand at the present time, The Canadian Pacific is amply protected. I submit that

if the proposal of the C.N.R. to adjust its own internal bookkeeping situation is granted, it will not in any way harm the Canadian Pacific.

I thank you for your very kindly hearing.

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AGRUMENT IN REPLY BY MR. MacPHERSON:

MR. MacPHERSON: Mr.Chairman and gentlemen of the Commission:

In opening the final argument on behalf of the provinces, I feel with some confidence that there is one conclusion to which the Commission can reasonably come on the basis of the evidence as we have had it, and on the basis of the argument; that is, that in so far as freight rates are concerned, which interest us so vitally, the recent increases in freight rates and future increases in freight rates will certainly be borne by those shippers, those consignees, who have to pay on the basis of long haul. That is to say, I think it is completely established from the evidence and from the argument, the argument of Mr. O'Donnell this morning on behalf of the Canadian National Railways, that not only in respect of future increases but in respect of recent increases which have been proposed by the Board of Transport, the burdens will be borne by those who are paying the long haul charges. That bears out the contention that the province of Saskatchewan has made from the start before this Commission, that that burden was bound to result because of national policy as it was developed. We have no complaint about that now, but it brings about a situation dealing with transportation which we urge before you.

I want particularly to deal with the argument of

Mr.Carson. Mr.Carson referred throughout his argument to the vigour with which the provinces resisted the applications of the railways for increases in freight rates. We make no apologies for the resistance that we offered in that regard in respect of his main argument which, after all, was that Section 52 (1), the right of appeal to the Governor in Council, be withdrawn. In support of that he gave a long history of the rate cases from the railway standpoint,and very briefly I want to indicate something from the provincial standpoint.

(Page 24396 follows)

Before doing that I want to refer to the suggestion of Mr. Carson in his full argument as to the provinces having delayed proceedings and that sort of thing, which was reinforced by the references made by Mr. Spence particularly during the course of his argument. I should like to refer to Volume 131, page 23460 where, in dealing with the Canadian National-Canadian Pacific Act Mr. Spence said:

> ".... I can think of no surer method of blocking further rate increases for all time, and I think I am safe in suggesting that this is in reality the object that lies behind the proposal of the provinces."

Later he says:

> "It is not hard to imagine how the provinces would have seized upon such a golden opportunity for the exercise of delaying tractics."

On page 23461 he said:

> "They themselves have boasted that every day for which they can delay the coming intoeffect of a rate increase means a victory for the provinces, regardless of the merits of the case."

Early in the 30% Case the railways themselves made a computation as to what they were losing per day and while there was no boasting by the provinces as to what was being saved the railways pointed up the situation by pointing out what they had claimed they had lost. Mr. Spence also at page 23458 refers to the attitude of the provinces in a rather odd way. He said:

> "Mr. Smith, Mr. MacPherson and Mr. Frawley all spoke of thelack of what was called 'policing' under the present Act, and if I may digress for

a moment, I should like to register a protest against the use of that word that crops up so constantly in the language of provincial counsel. I object to the attitude which seems to regard two of the greatest, soundest and most dependable and responsible corporate citizens of this country as potential criminals that have to be watched and 'policed' for fear that they will put something overon Canada. To a very large extent theCanadian National and the Canadian Pacific are Canada . . ."

I just want to say that the term "policing" as it has been used by the provinces, by myself, by Mr. Frawley, by Mr. Smith and others, was a term that was introduced into the rate discussions by no less a person than Mr. Liddy. The first use of it will be found in volume 29 of the 30% case at page 3079 where the Chief Commissioner in this exchange points up also, Mr. Chairman, the reason for delay necessitated by cross-examination and examination of witnesses. They were referring to the user system and the Chief Commissioner, Colonel Cross, said:

"The American Class I roads, as I understand it, do not adopt the user basis."

Mr. Liddy said:

"They have not adopted it, sir, but the Interstate Commerce Commission is on record as favouring the user basis, but there is a difficulty in policing it."

Then on page 3080 the Chief Commissioner, Colonel Cross, again said:

"I understood the witness to say that the I.C.C. were on record as favouring the user method of depreciation, but that the difficulty was in policing.

The Witness: The latter part is my interpretation."

That is Mr. Liddy.

"They are on record as saying, if I recall correctly from memory--

The Chief Commissioner; You say the comment about the difficulty of policing must not be attributed to the I.C.C. but to you?

The Witness: That is right, sir. I am interpreting their going on record as favouring the user method; their not authorizing it is due to a technical difficulty."

The Commission will have before it the evidence that was given in reference to depreciation, and what the actual situation was insofar as the I.C.C. endorsing the user method, favouring the user method, as Mr. Liddy says here, and there resulted from that statement of Mr. Liddy's days of cross-examination, days of argument relative to the user method and relative to the straight line method which has been in use in the I.C.C.

There is one other point I should like to refer to now, and it is in Mr. Evans' argument, volume 129, page 23197. He is dealing there with the argument of Mr. Shepard and myself on maintenance, and he said:

"I say that they have attempted to mislead when they say.....that the Board made no independent studies whatever in the 21% case, thus inferring that no independent study was ever made by the Board."

I referred to that in my argument as well. In the rate cases before the Board of Transport Commissioners the question of maintenance occupied a very important position for the reason that maintenance charges had tremendously increased. They had almost trebled in a period of ten years. Naturally much of this increase was due to increases in wages, increases in material costs, and

increase in volume of traffic, but in addition to all that there were certain items that we maintained were not properly chargeable to revenue which were being charged to working expenses and which should have been charged in some other way. In the 21% case judgement there is at page 39 an instance where the Board on its own carried out an investigation. This has to do with the Maritime Freight Rates Act. The point was raised by Mr. Burchell on behalf of the Province of Nova Scotia before the Board on final argument that there was no evidence to show that there had been a change in cost from 1927 in respect of the Maritime region, and consequently a tehhnical objection was raised. The Board, at page 39, says:

> "The Board has, I think, power toinvestigate and ascertain the facts itself and to make a finding based upon the results of such investigation, and we have proceeded accordingly. The Board instructed Mr. John C. Lessard, its then Director of the Bureau of Transportation Economics, to investigate and ascertain the facts, as to whether the cost of railway operation in Canada has increased since July 1, 1927, and if so to what extent, and to report thereon to the Board. These instructions were carried out and Mr. Lessard reported to the Board, as follows:"

Then they give the independent study of Mr. Lessard. In the 8% judgment, again during the 20% hearing, there was this argument in connection with maintenance, and the majority judgment says this at page 11:

> "On the hearing of this application the applicants restated and brought up to date their evidence and exhibits with reference to maintenance costs. I think that these maintenance costs will require further study before any decision can be given, even assuming that

"the requirements of the Canadian Pacifif Railway are to be accepted as the yardstick for a further increase in freight rates."

In the final determination, the 16% case, at pages 10 and 11, this is what was said by the Board of Transport Commissioners:

"The question of whether under the accounting rule, to which the Canadian Pacific claims to adhere, the locomotives referred to should have been written off and retired and the cost of rebuilding capitalized, is contingent upon whether the work serves to modernize the equipment", and so on.

Then it continues:

"After full consideration of the evidence of witnesses Newman and Liddy, I am of the opinion that the work performed does not accomplish such purpose."

Then there is this second paragraph:

"Apparently the Canadian Pacific Railway complied with the Interstate Commerce Commission instructions insofar as betterments and additions are concerned, but we are not in a position to know whether or not the Interstate Commerce Commission's accounting procedure was followed with respect to the new tenders.

With respect to the whole question of the interpretation of accounting rules - which rules are those of the Interstate Commerce Commission and not of this Board - it is my opinion that under existing circumstances we cannot say whether or not the railway has in all instances followed the procedure which we might deem the most satisfactory. In the dt determination of some of the charges there must necessarily be borderline cases where the best judgment of the railway's officers must make the decision."

Then in the last paragraph on page 11:

"Although the books of the company have not been examined in this respect, it would appear from the evidence of the Canadian Pacific that the principles of the Interstate Commerce Commission accounting have been followed correctly in accounting for expenditures as referred to by respondents."

Our submission was that there was no special study made, that there was no investigation whatever made of the books by the Board of Transport Commissioners, no test check of the books of the railway, and what is why we were so insistent in urging that not only should there be uniform accounting but that when that is installed the accountants of the Board of Transport Commissioners should not audit the books of the railways but make a test check to see whether or not in respect of maintenance, where so much money is involved and where so easily money might be charged to working expenses which should be properly charged elsewhere, that such things are not done.

Coming to the rate cases, the rate cases opened in the winter of 1946-47. They were the first general rate cases in over 20 years. The railways made an application for a 30% rate increase. The provinces came down here, counsel and accountants, admittedly knowing nothing about the properties, nothing of the implication of the application at all. At the very start our friends of the Canadian Pacific had the initiative. They treated us more or less as being interlopers, and they resented almost the suggestion that there should be any opposition to the 30% application, it was so reasonable, it was so naturally that the 30% should be granted.

The 30% was not granted. 21% was granted. Notwithstanding what our friends of the Canadian Pacific said as to how they could only get by with 30% Mr. Carson in his argument

speaks of the admirable courage of Colonel Cross in awarding 21%.

Insofar as delays are concerned, the sittings lasted for 150 days. That is true. The longest adjournment was granted in August of 1947. It was granted on the request of the railways and not on the request of the provinces. The provinces did not consent but they did not oppose the six week adjournmnert at that time. Regional hearings were held to which Mr. Carson objects very very strenuously. Those regional hearings were asked for by the provinces for the reason that this was the first rate case of any consequence since 1926, and furthermore it was a case in which the railways were asking for a 30% horizontal increase in rates.

The Board by design of Parliament is an ambulatory body. People all over the country were desirous of presenting evidence to the Board. It was a question of whether they would come to Ottawa to give evidence here at their expense or whether the Board would go to them. It seemed the reasonable and the democratic way that the Board should go to them and the Board did go.

In the printed argument that Mr. Carson filed all of it, of course, was in support basically of the repeal of Section 52(1). In 44 pages of argument in which he deals with it he uses the term "political intervention" or "political pressure" or some synonym 53 different times. He refers to the interrorem attitude of the provinces before the Board of Transport Commissioners, and he cites one reference to the argument of Mr. McLean in the 4% case, the last case, at Volume 128, page 22968 and 22969 and quotes Mr. McLean as saying:

> "Now it is not my purpose, sir, to reiterate the argument which I made at the conclusion of the final hearing of the 20% case -- the judgment arising out of which is the subject of these proceedings."

He goes on to quote Mr. McLean at length and refers to Mr. McLean referring to another tribunal. All I have to say about it is that at the very moment this was being argued before the Board of Transport Commissioners the 16% case was already under appeal to the other tribunal. Counsel on both sides had letters from the clerk of the executive council saying that the Cabinet would not consider it until this 4% application was disposed of, and it was well known to all that this was done.

All this was the situation at a time when an application was before the Board of Transport Commissioners, and included in that application, and a part of it very properly, was an application by the railways for leave to appeal to the Supreme Court if their application was not granted in respect of the 4%. The Board of Transport Commissioners knew perfectly well that whatever their decision was in that regard it would be part of the appeal with the 16% to the governor in council. They knew perfectly well also from the application that if they did not grant the application then there would be an appeal to the Supreme Court of Canada which would be raised by the railways.

The regional hearings to which I have referred were held throughout the country. There was no shortage of witnesses any place expept in the provinces of Ontario and Quebec. In western Canada and in the Maritimes the sittings lasted longer than had been anticipated would be necessary. Witnesses were called, cross-examined by railway counsel, and the evidence was given. Mr. Carson in Volume 128, page 22986 has this to say particularly abouut the Chief Commissioner:

> "The Commission will remember that in the result the Board was then evenly divided three and three, and the casting vote of the then Chief Commissioner resulted in regional hearings being held, which in themselves

"occupied some seven weeks, and an additional week in Ottawa. The Commission will please understand that in anything I have said I am not to be construed as offering any criticism whatever of the competence and good faith of the then learned Chief Commissioner."

He went on to say:

"My respectful criticism has been directed to showing that the then learned Chief Commissioner allowed far too much latitude in the course of the hearings and that in so doing he was unconsciously under the influence of the possibility of political intervention through the medium of Section 52(1), even though in the result of his judgment he displayed admirable courage."

That is to say, the suggestion is that for 149 days he had been weak and hesitant, and on the 150th he was brave and noble. It so happened, Mr. Chairman, that probably of all counsel or anyone else who appeared before the Board, I had known the Chief Commissioner personally longer than anyone else. I know this of him, that he would do what he felt was right, and would not be influenced by any threat of having his decision reviewed, and any thought of review of his decision would not deter him from doing what he felt under the circumstances was the proper thing to do.

THE CHAIRMAN: We will adjourn now.

-- The Commission adjourned at 1 p.m. to resume at 2.45 p.m.

Ottawa, Ontario,
Tuesday, May 30, 1950.

AFTERNOON SESSION

ARGUMENT IN REPLY BY MR. MacPHERSON (Continued)

THE CHAIRMAN: Very well.

MR. MacPHERSON: Just before we adjourned I had been dealing with the rate cases, and I just have one further thing to say about them. When one analyzes the argument of Mr. Carson and considers what he has said as to delays and hesitancy, and as to the fear that the members had of 52(1), it is really a serious indictment of the Boards that have been in charge of the rate cases during the last three years.

As to the time spent, while 150 days was spent on the first rate case, the amount of time spent on the second case was 28 days, and the majority of that time was spent in connection with an effort by the Canadian Pacific to establish a rate base with expert evidence in the form of witnesses whom they called from New York, and special counsel they had from New York, and in the argument that followed from that evidence. As against 150 days in the first case when the pattern had been set the second hearing was for 28 days, and the third hearing on the final determination of the 20% case was 4 days, and on the motion in respect of the 4% the Board sat only for one day.

Mr. Carson in his argument raised the question that the provinces were not speaking for the great bulk of the population. I can only say on behalf of the province of Saskatchewan that the list of those for whom I do speak is set out in Volume 108 of the record at page 19858. I speak not only for the government of the province but for practically all organized bodies of the province. The entire list is set out at page 19858 but I will not read it because it is too long. It represents producers and consumers,

the business life of the whole province. I believe that in measure counsel for the other six provinces spoke likewise on behalf of their people.

As I suggested to the Commission I regretted what Mr. Carson had said relative to the rate casesmerely as the background behind his main argument asking for repeal of Section 52(1). In respect of Section 52(1) he suggested to the Commission that the governor in council might have power beyond what was set out in the Railway Act. I suggest to the Commission that that could not be so, that the governor in council itself would not have the prerogative right to legislate, that it is merely the designated body appointed as the appeal tribunal to whom petitions can be taken under the Act, and that the first thing that counsel would be met with, one way or the other, in appearing before the cabinet would be as to the terms and provisions of the Railway Act itself.

Mr. Carson in his argument suggested thatwhen Parliament made provision for the petition to the governor in council that this was only for a transitional period, and that the inference was that Parliament had intended it should be abolished. The matter of freight rates had been dealt with of course by the railway committee of the House until 1903 when there was established the Board of Railway Commissioners, and at that time this section was put in the Act. I have read very carefully the debates of the House at the time that consolidation of the Railway Act was before the House, and the debates of the Senate as well.

THE CHAIRMAN: What year?

MR. MacPHERSON: 1903. The minister in charge of the bill was of course the Honourable Mr. Blair. In the course of the debate in the House such members as Mr. Borden, afterwards Sir Robert Borden, and Mr. Lancaster took

part. In the Senate the bill was in charge of the Honourable Mr. Scott, who was leader for the government in the Senate, and such speakers took part in the debate as Sir Mackenzie Bowell and Senator Landry. There was not the shred of a suggestion that this was temporary or that there was any transition period.

The reference made to it by Mr. Blair was thatthe recommendation was a recommendation of Professor McLean's, and it was accepted. Both of Dr. McLean's suggestions were accepted in that connection. When you go over the 47 years history of the legislation as found in the C.P.R. submission, part 1, page 147, you find the number of petitions, the number that were allowed, the number that were referred back. At the bottom of page 147 there is the following:

"Since the inception of the Board of Railway Commissioners there have been fifty-one appeals to the Governor-in-Council. Only three of these were allowed. Fourteen were referred back to the Board for further consideration. The balance were either dismissed, withdrawn or abandoned."

Therefore I suggest to the Commission that on the record of appeals there was no reason or should be no reason why individual members of the Board should be timorous or feel that they would be in any danger if they did that which they felt was right.

On the other hand, so far as the provinces are concerned the provinces feel very definitely that they do not want to leave the matter of rates to any agency from which there is no appeal, or to any agency above which there is no body which will review their decisions. I will deal later with a further part of the C.P.R.'s case in this connection, but the provinces do not want to see a bureaucracy established, particularly in the light of the fact that the railways are so insistent that in dealing with rates the Board should not at any time be concerned with any economic elements at all. They are

very definite on that. To put the Board in that position would mean that there would be no tribunal, no agency, above it to deal with it in any way and that would not be in line with the views of the provinces.

One has only to consider the four judgments of the Board in the rate cases to indicate that, so far as the provinces are concerned, they can reasonably say that the Board is not quite infallible. In the 21% case there was a petition taken to the Governor-in-Council which was successful. In the 8% case there was a judgment and an appeal by the Canadian Pacific to the Supreme Court of Canada which was successful. In the 16% judgment there is an appeal pending to the Governor-in-Council, and there was the 4% judgment in which the Board admitted that they were in error in the 16% judgment.

Therefore having regard to the history of decisions during the last three years, and having regard to the situation as we have it, I suggest that the contention of the provinces that there must be some agency above the Board is a reasonable one, one that should be given effect to, and that Mr. Carson's argument that 52(1) be repealed should not be acquiesced in.

Insofar as Professor McLean is concerned, Mr. Carson suggested from parts of his report sections which would indicate that he felt that it should be an independent tribunal altogether, but when Professor McLean had to make definite recommendations to the government as to what should be done he provided for this appeal, and it was that provision that was carried into the statute and that is in the statute today.

Some tribunal should be set up and what more fitting tribunal than the Governor-in-Council. The Governor-in-Council can consider matters with a sense of their responsibility and trust as the executive of Parliament, and with some recognition of the economic situation of the country which our friends would

deny to the Board of Transport Commissioners itself. Obviously you could not appeal any such matter to the Supreme Court of Canada. There must be some tribunal, and I am suggesting that so far as the tribunal is concerned the proper one is the one we now have.

Both Mr. Carson and Mr. Evans quoted at length from Dearing and Owen on the national transportation policy. It is rather interesting in this regard, keeping in mind the difference in form of government in the United States and Canada, and realizing that the responsible cabinet ministers there are not members of parliament as they are here, keeping in mind the situation as we have it there it is interesting to see what these gentlemen propose by way of reorganization, at pages 407 and 408.

THE CHAIRMAN: What is the name of the book?

MR. MacPHERSON: Dearing and Owen.

THE CHAIRMAN: What page?

MR. MacPHERSON: 407, my lord, at the bottom of 407 and the top of 408. Their recommendations would provide statutory recognition of the right and duty of the Secretary of Transportation to appear before the commission to present the views of the executive branch of the government with respectto the rates, services and operating adjustments required to maintain the transportation system in a condition adequate to serve the needs of commerce and the national security.

That is to say, today in the United States the Interstate Commerce Commission comes under the Secretary of Commerce but they suggest that there be a Secretary of Transportation appointed. Then they suggest that the Secretary of Transportation appear before the Commission to present the views of the executive branch of the government with respect to rates, service and operating adjustments.

THE CHAIRMAN: That would not make him a court of

appeal.

MR. MacPHERSON: No.

THE CHAIRMAN: On the contrary he would be one of the parties appearing.

MR. MacPHERSON: That is right, but what I am suggesting is this, that while he is not in appeal at the same time there is recognition of the view that there should be a closer connection between the Board and some department of government.

(Page 24416 follows)

THE CHAIRMAN: I notice in some of the United States cases, for instance, the Secretary for Agriculture appeared before the Commission.

MR MACPHERSON: Yes, the Secretary for Agriculture has appeared in some of these rate cases, and representatives of the Department of Agriculture have appeared and made presentations on behalf of agriculture as such, but in this representation---

THE CHAIRMAN: Then the Secretary for Transport -- is there such an official now?

MR MACPHERSON: No.

THE CHAIRMAN: He would be, I suppose, practically the equivalent of our Minister of---

MR MACPHERSON: Minister of Transport.

THE CHAIRMAN: Minister of Transport, yes.

MR MACPHERSON: But instead of having a Secretary of Commerce, as they have today in the United States, part of whose duties is to look after this, they recommend a Secretary of Transport, and then they suggest that that Secretary of Transport discuss the needs of commerce and national security as well, and present the views of the executive branch of the Government, present the views of the national Government. Now, I am not suggesting that it is appeal, but I am suggesting that there is a trend there, and that there is not the same sort of government, of course, as we have here.

THE CHAIRMAN: It would be perhaps the reverse; it would be putting this government official, who would be a member of the President's Cabinet, in the position of an applicant before the Board.

MR MACPHERSON: Yes, but he is stating government policy.

THE CHAIRMAN: Yes, but the Board does not neces-

sarily adopt these views.

MR MACPHERSON: Not necessarily.

THE CHAIRMAN: I am not saying it is a bad idea. It may be a very good idea.

MR MACPHERSON: I am not urging that as an idea, other than to indicate that the authors of the book indicate that there is the necessity for some closer association between the Board and the executive in the event of the executive feeling that the decisions are not in the interest of commerce or of national security.

Now I want to refer, because it is more or less tied up with this, to the question of rate base as argued by Mr. Sinclair particularly.

First, as between Mr. Sinclair and myself, as to what the law is, both in the United States and here, I do not think there is any difference at all excepting this---

THE CHAIRMAN: Are you dealing now with this proposed amendment?

MR MACPHERSON: That is part of it. They are asking for the establishment of rate base. The question comes up as to the event of a rate base being established. My friend suggested a replacement basis, but what he asked for particularly, what he pleaded for in fact, was on book investment, and he did that at volume 131, pages 23538 and 23545. At page 23538 he said:

> "I submit that in Canada the only practical and acceptable base is book investment of Canadian Pacific and would ask your Commission to recommend that basis be adopted."

Then at page 23545 he said:

> " . . . that you give support by your report to the book investment base as being the base for the fixing of rates for the Canadian Pacific."

Now, we of the provinces -- certainly Saskatchewan -- reject the idea of reproduction cost or replacement cost. The only cost that could be considered in any event would be historic cost, and historic cost would be represented in the books. But what I want to try to point out to the Commission in connection with the cases, the American cases that Mr. Sinclair cited, the ones that I cited -- we cited the same cases -- was this, that both with the American cases and the British Columbia case the Board, before it dealt with the books and while dealing with the books, had as its assistants the strongest group of accountants and engineers and statisticians and experts that it could get around it. It did not necessarily accept the book figures as such, and it considered the book figures as they were analyzed by the accountants and as they were analyzed by the engineers, and not the utilities engineers but the engineers and accounts and experts of the Commission or the Board itself.

Mr. Sinclair referred in his argument to the exhibit filed by Mr. Frawley, Exhibit 279, indicating the great number of experts who were attached to the Board of Transport now, and, without reflecting on these gentlemen at all, I do not think the provinces are particularly impressed with their ability to sit in conjunction with the Board in establishing any rate base for the Canadian Pacific Railway.

There are other reasons why we say that the book investment, the book figures, cannot be taken. The cross-examination of Mr. Liddy by myself will be found in volumes 89 and 90. Exhibit 194 is an exhibit which was put in, which is the condensed balance sheet of the company of the Canadian Pacific Railway in 1885. Exhibit 195 was a copy of a letter written by Mr. Stephen to the Minister of Railways in 1884. Exhibit 196 was 49-49, the split

balance sheet as put in by the railway in the 20% Case when they were endeavouring to establish a rate base.

There is the evidence of Mr. Liddy, for instance -- there are other instances that I could go to, but as the time is limited I will not -- the evidence of Mr. Liddy at page 17122. I was cross-examining him on his own Exhibit 190. Exhibit 190 was that exhibit which the Commission will remember, which was a digest of developments. He was cross-examined on that, and it showed that in 1885 the net railway property investment was $160 million. At that time all the cash that had been put in by the shareholders of the company was $29 million.

At page 17122 we find this:

"Q. Well, what my question to you was, was this, that at that time, the property investment according to your Exhibit 190 stood at $160 million, but the cold cash that had been put in by your shareholders was $29 million.

A. I think that is right."

At page 17137 there was put to Mr. Liddy the statement as to dividends paid at 3 per cent on $65 million, the guaranteed dividends, the guaranteed payment of dividend for a period of ten years, and he admits that the payment was a payment out of capital. That is, he admits that in the billion-one that you have in Exhibit 49-49 there is included these payments out of capital which went for dividends between the years 1883 and 1893, the 3 per cent guaranteed dividends. Now, that is an indication of the type of objection that could and should and would be taken, and consequently we say that the book figures cannot be accepted, or merely because Mr. Gilmer or Mr. Somebody else says that the books were well kept,

they are satisfied, years before they were born, that the book figures should be accepted. That is just an indication of the fact that you cannot accept the book figures.

Then when we come to this as provinces, and when we remember particularly what the situation is relative to the burden and long haul, when we come to find the panacea that is offered to us by the C.P.R., both Mr. Northey Jones, who gave evidence here and who gave evidence in the effort to establish the rate case, and Dr. Dorau, who was their expert as called there, indicated that in their opinion certain moneys shuuld be raised.

Mr. Jones here gave evidence to the effect that the amount should be $63 million, which would mean an increase over present rates,without the 4.4 per cent that was allowed last week, of 19.5 per cent, a further increase, to give the $63 million.

Dr. Dorau, too, according to Exhibit 206 which is filed here, would indicate that to give the increase which he suggested was the minimum would have meant an increase in rates of 81 per cent.

Now, that is the rate of return, that is what is suggested by the experts, taking a base of a billion-one, which both Mr. Jones and Dr. Dorau and the others felt, according to the Canadian Pacific, was the minimum base, and which has been urged by counsel for the C.P.R. here as the minimum base, and which is probably the base that would be arrived at if Parliament acquiesced in the principle that the book figures alone would be taken -- book investment, as Mr. Sinclair says and pleads with the Commission to recommend book investment alone. I am suggesting to the Commission that book investment on that basis cannot and should not be accepted.

Mr. Sinclair said in his argument, in volume 131,

at page 23525:

"Mr. MacPherson in his argument (Vol. 120, pp. 21644-5) referred to both of these cases."

That was the British Columbia Case and the Hope Natural Gas Case.

"Mr. MacPherson attempted to leave the impression (if I understand him correctly), I submit, that in each of these two cases the regulatory commission did not accept for a rate base book investment figures."

Book investment figures were not accepted as such; they were accepted after complete investigation and analysis by independent auditors and by independent accountants and by independent engineers. That was true in British Columbia, where Touche & Company were hired, it was true in the Hope Case, and it was true in the Natural Gas Pipeline Case as well.

One of the difficulties in the Canadian Pacific as it is now is this, and in the matter of book investment figures, that in 1885, as Mr. Liddy agreed in cross-examination, it was strictly a railway company, whereas today it has become a corporation, and because of their many and varied interests there are conflicts at times as between what is good for the corporation and what is good for the railway.

At page 171 Mr. Liddy was asked:

"Q. My point is this, Mr. Liddy, in Mr. Frawley's examination of you, for instance, the other day it came out time and time again the question of the apparent conflicting interest of the railway as against the company, now in 1950. Is that right?

A. Yes, there are a lot of questions along that line.

Q. Which did not exist in 1885?

A. Oh, no; they had other problems then."

But that situation exists, and that is the situation which enters very, very definitely into the situation so far as the C.P.R. is concerned.

Now we come to the point as to what the Canadian Pacific actually wants. They want the elimination of section 52(1). They want a Board established without any appeal. They want a Board without power to consider economic elements at all. They want a rate base established by statute, and they want by statute the company itself designated as the yardstick. Now, the result would be---

THE CHAIRMAN: Well, those two last considerations are the same.

MR MACPHERSON: Well, not necessarily.

THE CHAIRMAN: You say they want a rate base established by statute.

MR MACPHERSON: They want a rate base established by statute.

THE CHAIRMAN: And they want themselves a yardstick by statute.

MR MACPHERSON: That is right.

THE CHAIRMAN: That is all in the one---

MR MACPHERSON: It is all in the one amendment. Now, if they had a rate base established and a rate of return established and there was no appeal from the Board, then applications before the Board would become purely automatic. The Board would be in this position, that it would have the rate base, would have the rate of return which it had fixed, and if it did not increase or fix rates based on what that rate of return and what the rate base showed, then, while the applicants here, the provinces, would be denied any appeal to the Governor in Council, the railways would have the right of appeal to the Supreme Court of Canada on a question of law, they would have the right to go there and insist, as they did in the 8% Case, that the Board do its duty.

(Page 24423 follows)

Now, the position is that so far as the Board is concerned, our friends of the C.P.R. tell us now that the Board is kept in a state of terror by the existence of Section 52(1), the threat of an appeal on the part of the provinces. The same situation would exist in so far as the Board is concerned only the other way because there would be an appeal to the Supreme Court of Canada forcing it to do what they wanted done, and in so far as the provinces are concerned there would be no right of appeal under Section 52(1) at all.

One of the reasons that we fear this is because Mr. Sinclair has adopted Professor MacDougall's view at page 23547. This is what he suggests at the bottom of the page in answer to Mr. Evans:

> "What I suggest is that a rate of return calculated as I have indicated should be regarded as permissible, and that the company should be free to establish rates under this rate of return as a ceiling."

I will read that again because this is the suggestion they recommend.

> "What I suggest is that a rate of return calculated as I have indicated should be regarded as permissible, and that the company should be free to establish rates under this rate of return as a ceiling."

The position is that so far as the provinces are concerned before the Board of Transport Commissioners the provinces take the position that the Canadian Pacific should be taken as the yardstick in fixing rates, their requirements, for the reason that having regard to the financial position of the Canadian National the two were not comparable. If there were a rate fixed to give a

return to the Canadian National the Canadian Pacific, while they did not take a stand on it, naturally would be delighted with it because it would give a return which would be abundantly profitable to the Canadian Pacific. So far as the yardstick is concerned the provinces maintain that the Canadian Pacific should be the yardstick. The position now is that the Board has before it directions to inquire into how there can be comparability as between the railways.

THE CHAIRMAN: You mean this Commission?

MR. MacPHERSON: Yes, your Commission. The position that we take is that, consistent with what we said before the Board of Transport Commissioners, we recognize that the Canadian National is in a position where its capital structure must be revised. We recognize that. We say the same thing here. We say, however, that in revising it it should be revised on a basis where there would be comparability between the two roads. We say that the designation as to the yardstick should not be in the statute in any event.

We can see if the Gordon plan were accepted where the Canadian Pacific would have a strong argument before the Board of Transport Commissioners urging that it still be the yardstick, but if the Gordon plan is not accepted as it is, if there is consideration given in such a way that there is comparability between the two railways then there can be that done which would eliminate the objection that the provinces took to the situation during the Rate Cases, the 30% Case, the 20% Case, and so on.

The situation is that we feel that the Canadian National should be put in a comparable position. We would object to the situation relevant to the stabilization

fund, and as it was mentioned this morning something of the same situation might develop if section 10 were left there as it is without something being done to make the units comparable. Certainly our province has not taken the position of endorsing anything other than that there should be comparability established as much as possible. Frankly the idea of income bonds has merit, I feel, in the matter of assisting to do that. I do not think they should be cumulative at all but I think in order to establish comparability something might be worked out along that line that would be satisfactory to the Canadian National and satisfactory to the Canadian Pacific, and that there would be established a measure of comparability. If the present position of the Canadian National, its hopeless position in the matter of fixed charges and debt makes the situation lopsided as between the two, then it would be unfortunate if it were lopsided the other way, and be a cause for difficulty and trouble in the future.

We say that realizing that the Canadian Pacific is, I think, asking for too much. They are asking for too much in asking that they be named, that they get this rate base by statute, that the Board be directed to fix it. I say leave that to the Board.

Furthermore I suggest on behalf of Saskatchewan that they are asking for too much in insisting that they be set up as the yardstick. Leave that to the Board. That surely is the function of the Board and the Board's duty. When they ask for too much it would almost appear as if they themselves in these days of the welfare state want guaranteed social security, and perhaps without a means test because they say Other Income must be kept by itself, and that must not be touched.

MR. SINCLAIR: Sulphur.

MR. MacPHERSON: That is not sulphur. So far as the provinces are concerned the position the provinces take is that both of the railways are giving good service to the country at the present time, and the provinces do not want the railways marked as public enemies 1 and 2, or anything of that kind. They do not want that position to exist at all. In our country we are so dependent upon the railways, so absolutely dependent upon the railways, that it is essential to us that they be maintained, and maintained efficiently. We have not got any other means to get our products out. We may put pipe lines in there but you cannot pipe your wheat. That cannot go out and neither can we bring in products such as automobiles or anything of that kind by a pipe line. We must have railways. We appreciate the great job that was done during the war by the two railways. We realize further that these are days of great anxiety, and that it is most important that the railways, having regard to the future, must be maintained in a position that will be desirable in the event of there being further difficulties or further troubles which we hope will never arise.

We realize all this but we say that so far as we are concerned as provinces, particularly in the West, that having regard to the situation as it is, the undoubted weight of evidence as it is here, the admitted evidence and argument, the burden on us is such that we will be borne down.

We are faced with a situation in my province where, notwithstanding the prosperity of ten years, we have lost over one hundred thousand population in fifteen years, and that is not good either for the province

or for the railways. The railways need population as much as we do, and those influences which tend to weaken our population and send our population out of the country are influences such as freight rates and economic influences, which in some measure must be corrected.

I want to say that my friend Mr. Sinclair said during the course of his argument that the province of Saskatchewan had taken no position on the matter of long and short haul. I am not going to deal with that again. That was taken up by me in the record at page 21761, and the position on long and short haul taken by the province of Saskatchewan is made clear there. The position in so far as Saskatchewan is concerned is that we regard the transcontinental rates as competitive rates all of which should be subject to review by the Board. Our position is stated there in a way that I suggest will indicate that the province actually does take a stand relative to the long and short haul question.

I come to the question of what is offered by way of a solution. From the very first the province of Saskatchewan has urged the subsidy device. We recognize in our country, as the term "marginal" is used, our people are in a measure marginal farmers, not submarginal. We have taken care of the submarginal out there in our own way. The land has been converted into community pastures. That has been looked after provincially. In so far as marginal producers are concerned, however, the more the freight rates rise the more marginal becomes the position of our people, and the more difficult it will be for us.

Mr. Evans suggested in his argument that subsidies were referred to in VonMises and the Wall Street Journal, and the objection that was taken in that

connection to this situation, the mistakes that were made by even bringing the Canadian National Railways into being. The Minister of the crown who was responsible for bringing the Canadian National legislation before Parliament in the first place was not a man whom I ever regarded as a radical in this country, the Honourable Mr. Meighen. He was the man who led the legislation through Parliament.

The situation is now that the Canadian Pacific comes before us notwithstanding the fact that, according to 49/49 they had $78 million by way of grant and donation, notwithstanding the fact that they had forty million acres of land they say now these are all earned, forget about those things. If that is so, if we are to forget about them entirely then all I can say is that in so far as the Canadian Pacific is concerned as an instrument of national policy as it was first intended we have paid a very heavy price for it in Canada if we are to forget all that at the present time.

I come now to the matter of subsidies. It was argued by Mr. Evans that pages 23235 to 23277. As I followed his argument, I was delighted that he had no word of criticism of the claim of Saskatchewan that the regional impact of freight rates can be corrected only through a subsidy device. A careful reading of the transcript indicates that no attempt was made to rebut the justice of our claim.

This is a matter of satisfaction. However, I wish to reiterate that it is our categorical submission that a practical measure of justice can be established and achieved only in this manner. It is our claim that the subsidy device would do two things. First of all it will give some measure of compensation for the future for the transportation handicap carried by the

prairie region as a result of the national policy of the past.

THE CHAIRMAN: You mean compensation to the railways?

MR. MacPHERSON: Some measure of compensation to us.

THE CHAIRMAN: The subsidy will go to the railways.

MR. MacPHERSON: The subsidies will go to the railways, a transportation subsidy, and secondly it will give us some measure of guarantee against the unconscionably high burden being placed on the prairie region because of unduly high rates and long haul traffic, a burden unduly high today and which promises to be increasingly onerous in the future.

Mr. Evans did not agree with subsidies. I would submit that his argument amounted to no more than this, that subsidies once begun might increase to such an extent that the Canadian Pacific Railway might cease to exist as a private company. Apparently the burdens on the millions, and there are some millions of humans West and East, are as nothing compared to the existence of the one company.

It seems to me that the situation is clearly much less dramatic than the argument of Mr. EVans would employ. Let us approach the problem on the basis that the Canadian Pacific Railway must be preserved at all hazards as a private company. Are subsidies really as bad as they are painted? First as to the argument that since 100 per cent payment of transportation costs by the state is bad therefore any payment of transportation subsidies is bad. Generally speaking such a generalization

would be ridiculous even if the premise were true. Just because all people should not live at the expense of the state -- and most people will agree with this -- it does not prove that old age pensions, mothers' allowances and blind pensions, and so on, are bad. Generalization just does not mean anything.

To the argument advanced by Mr. Evans that a transportation subsidy obscures the real cost of transportation I would suggest that the real cost is pretty well obscured anyway. We have had evidence before us as to a loss in passenger traffic for the Canadian Pacific of $28 million, and of losses in the Canadian National passenger traffic as well. What it means is that in fact freight today is subsidizing passenger traffic, and your long haul traffic is bonusing short haul traffic, and competition where there is a monopoly is bonusing competition where there is no monopoly. I suggest that the payment of a subsidy is one way to bring home to the Board, to the Government and to the people the real cost of transportation.

I suggest that it might very well lead to a greater demand for efficiency and co-ordination not only on the part of the railways but also on the part of all media of transportation.

Mr. Evans then suggested that there was not an awareness of real costs. I suggest in connection with awareness by the people as to the real costs of transportation that the people of the prairie region are under no misapprehension whatever as to the costs of carrying a large share of the total transportation burden by the people of that region. This awareness has been expressed in the request not only for a compensation subsidy modelled on the Maritime Freight Rates Act but also

in the request for a deficit subsidy to guard agains an undue portion of the total freight rate bill of Canada being saddled upon the users of rail freight services in the prairie region.

THE CHAIRMAN: You mentioned a subsidy based on the Maritime Freight Rates Act.

MR. MacPHERSON: That is a compensation subsidy.

THE CHAIRMAN: It is to the shipper.

MR. MacPHERSON: It is to the shipper, yes, my lord.

THE CHAIRMAN: What you have in mind, as I have understood you so far, is a subsidy to the Railways.

MR. MacPHERSON: Yes, it is paid to the railways but, as the Maritime Freight Rates Act does, it reduces the cost to the shipper, the cost to the consignee.

THE CHAIRMAN: That is a subsidy which goes to the railways, and the shipper receives the benefit of the difference between what he pays and what the rates would be if it were not for the subsidy.

MR. MacPHERSON: That is right.

THE CHAIRMAN: Would the system you have in mind, operate in the same way in Saskatchewan?

MR. MacPHERSON: Yes, the same way. The only difference in the system as suggested in the submission of Saskatchewan, as the Chairman may remember, was that whereas under the Maritime Freight Rates Act the rate is on that which goes out of the area or which is in the area, what is suggested in Saskatchewan is in and out.

THE CHAIRMAN: In Saskatchewan the shipper would pay so much less than the rate, and the railways would be compensated in the same way as under the Maritime Freight Rates Act.

MR. MacPHERSON: That is right.

(Page 24430 follows)

Finally, I should like to submit that the payment of a transportation subsidy is only one method of meeting a situation that is actual and which calls for immediate attention. There is nothing unique in the meeting of situations in this manner; in fact this method is typical of modern economic solutions. Western civilization has not languished just because national funds have been put to work for the purpose of ameliorating injustices. In fact it may be stated that this is a method of western civilization in contrast to the rest of the world.

In concluding my remarks on behalf of Saskatchewan I sugeest that the main objective is to provide the great railway system of our country with adequate revenue for efficient operation on a basis equitable to all parts of our country. I urge that without recourse to the subsidy devices proposed by Saskatchewan this objective is unlikely to be achieved; and while we are concerned with the maintenance of the railways, and while we appreciate what the railways are doing now, at the same time we say very frankly that if the answer is the answer of higher freight rates all the time, the situation is one which we just cannot bear and carry on as effective units in Confederation.

Thank you very much.

THE CHAIRMAN: Very well, Mr. Shepard.

ARGUMENT IN REPLY BY MR. SHEPARD

MR SHEPARD: May it please the Commission:

Manitoba's argument before your Commission is found in Volumes 118 and 119 of the transcript commencing at page 21368. This fact is mentioned at the outset of our reply, because it is not our intention to repeat the views already expressed on behalf of Manitoba in our main argument.

Notwithstanding what has been said by the C.P.R. with regard to some of Manitoba's submissions, we are content to leave the record as it stands, and to abide by the decision of the Commission after having given proper weight to all the views expressed.

It is intended to confine comments on behalf of Manitoba in reply to six points, as follows:

(1) The suggestion of Mr. Evans that while Manitoba pays lip service to private enterprise, its suggestions with respect to the C.P.R., if implemented, would result in its nationalization.

(2) The matter of what the C.P.R., particularly Mr. Carson, has chosen to call political interference.

(3) The matter of delay.

(4) Disparity in rate levels East-West, which includes a consideration of Exhibit 287 filed by Mr. Evans.

(5) The power of the Dominion Parliament to legislate with reference to the Crown in the right of a Province, which was introduced by Mr. Spence in his argument on payment for grade crossings.

(6) Mr. Sinclair's interpretation of the Manitoba submissions on competitive rates and long and short haul.

(1) I would like first to refer to a comment made by Dr. Angus in volume 130, at page 23259a, where he said to Mr. Evans:

"You see there is a suggestion in the paragraph at the top of page 75a" --

and that page reference is to Mr. Evans' mimeographed argument --

"that if you take one step you have to go the whole way."

This is with regard to subsidies or nationalization.

"The contrary position might be if you have taken one

step, perhaps by taking another step you might get a better balance, a better stance and not go the whole way. 'Do subsidies on a limited scale not appear as taking that second step which perhaps improves your position, keeping those metaphors, so that it does not commit you to the whole journey".

We recognize that in this comment Doctor Angus may or may not be expressing his own opinion. We refer to it because it does serve to illustrate Manitoba's position which amounts to a desire to support the continued private enterprise position of the C.P.R., but at the same time we recognize that there are only two alternatives open to the C.P.R. One is regulated private enterprise and the other is nationalization. We are not prepared to accept what in our view the C.P.R. proposals involve, namely to leave the C.P.R. to work out its own salvation by further freight rate increases.

As long haul traffic is in future to bear the brunt of rate increases (and this is admitted by Mr. Evans, Vol. 130, p. 23259b), and if rail costs continue to rise, surely it is obvious that the result may well be a serious economic dislocation which would be evidenced by a reduction in certain types of production, and a reduction in purchasing power with a resulting drop in railway revenues. Thus the Railways' net position, as well as the health of the Canadian economy generally, would be worsened. This is Manitoba's fear.

The Manitoba Government is not socialistic in any way, but I submit that it is realistic and that its submissions have been made in an effort to be constructive. Manitoba cannot agree with the fear of the C.P.R. that any form of government assistance to it is bound to result in its nationalization. The C.P.R. was born with the aid of

justifiable Government grants and donations which gave it its initial impetus as a private enterprise. That is not a criticism of the C.P.R. -- it is a simple statement of fact. The C.P.R. was assisted by the Government during the depression -- again we consider that assistance fully justified.

THE CHAIRMAN: Is that a matter of the loans during the depression?

MR SHEPARD: Yes, sir.

THE CHAIRMAN: And they have been repaid?

MR SHEPARD: Yes.

The C.P.R. has thus in the past, as a matter of national policy, been nurtured and protected because Canada needs and will continue to need its railways.

Manitoba recognizes that the point may be at hand beyond which rates cannot be increased without the railways running a serious risk of pricing themselves out of the market. The C.N.R. (Vol. 110, p. 20218) recognizes this risk; the C.P.R. does not recognize the risk. Mr. W lker in Vol. 64, p. 13402 in answer to a question said:

> "So long as that rate level is reasonable, I do not see whether it makes any difference whether the freight rates go up 50% or 100%. The base must be reasonable and every other commodity in this country is selling, not at 50% but at 60% or 70% of its current price in 1939 and we are paying those prices."

It therefore becomes a matter of deciding whether the opinion expressed by the C.N.R. officials or the C.P.R. officials is the sounder. In support of the C.N.R. view we would refer to the 62nd Annual Report of the Interstate Commerce Commission to the United States Congress dated November 1st, 1948. On p. 2 of the Report, after referring to recent freight rate increases in the United States the

following statement appears:

"There are, nevertheless, disquieting features in connection with these increases. They, with increases granted in other proceedings, have resulted in advances in certain rates of much more than 44%. We also are deeply sensible of the contributions of such increased rates to the general condition of inflation and of the fact that any substantial increase in transportation charges, even in a period of rising prices, has serious repercussions on the economy of the country as a whole, on sections, and on particular shippers."

And further on page 3 the Report states:

"For a number of reasons the railroads in their own interests must not rely or expect us to rely solely on what their Cost Sheets show. Rate increases may be carried to the point where they are largely self-defeating. Viewed from a broader standpoint, continuing and large advances in rates work changes in the national economy which, on the whole, should be avoided where possible."

THE CHAIRMAN: Do they explain what they mean by those words "where possible"?

MR SHEPARD: No, they do not, Mr. Chairman.

THE CHAIRMAN: They do not say what else they would do, then.

MR SHEPARD: Well, I think what they have in mind is the railways making every effort possible to reduce their cost and increase efficiency, along the same lines that we have heard evidence before this Commission.

COMMISSIONER INNIS: Mr. Shepard, on the previous page you say:

"It therefore becomes a matter of deciding whether the opinion expressed by the C.N.R. officials or the C.P.R.

officials is the sounder."

Isn't it just possible that both are sound, in the sense that one, being, as was pointed out, so much a central Canadian road and exposed to the effects of truck competition, may suffer very materially with an increase in the rates, and the other, being very much a western road, may have the advantage of long haul and consequently not suffer as much?

MR SHEPARD: Well, I think that is quite possible, if not probable, Dr. Innis.

If increases in rates cannot because of the law of diminishing return produce sufficient increased gross rail revenue to offset rising costs and meet reasonable requirements of Fixed Charges, Dividends and Surplus, what is the C.P.R. to do? Is Manitoba's position socialistic simply because we recognize this possibility and at the same time recognize that railways are and will continue to be a national necessity?

THE CHAIRMAN: Then you tell me that the Interstate Commerce Commission in setting out the difficulty does not offer any solution?

MR SHEPARD: Well, in this report, Mr. Chairman -- it is really from the very first part of the report -- they do go on and comment for several pages on planning of substantial capital investments, and it is really the same type of evidence that we have been hearing here as to increasing efficiency and cutting costs. I think the report is by way of a warning to the American railroads that they must do that to survive.

THE CHAIRMAN: Then all that must be done along with the necessity of keeping efficient transportation going in the country.

MR SHEPARD: Exactly, sir.

THE CHAIRMAN: Which is very important in Canada.

MR SHEPARD: Yes, it is.

THE CHAIRMAN: I mean, in the interests of the provinces themselves.

MR SHEPARD: There is no question about that; but if you do reach the point, sir, where the rates cannot go up and still increase the gross revenues, in other words the law of diminishing returns sets in, and if the railways cannot increase their efficiency or save costs, then I say that it is not a socialistic concept to suggest in Canada that the Government must assist the railways under those circumstances, because we must have the railways.

We do not say that the C.P.R. requires Government aid today. We do say that such aid may become necessary in the future. We also say that our view of the result of such aid is that it would not constitute a threat to the existence of the C.P.R. as a private enterprise.

Closely allied to the view of the C.P.R. that the point is not now at hand when the level of freight rates may result in the railways pricing themselves out of the market is the C.P.R.'s submission that freight rates should be raised to a level sufficiently high to give the company net earnings in sufficient amount to put the price of the common stock above par, thus restoring the credit position of the company and enabling it to sell equity stock in the open market.

In Manitoba's main submission (Vol. 45, p. 8661; printed submission p. 99) the following statement is found:

"The investing public no longer consider the field of railway bonds and stocks as attractive an investment opportunity as it once did. Rightly or wrongly it appears that for reasons such as the encroachment on

the position of the railways by other carriers, the slowing down of the extensive development of this continent, the frequent bankruptcies of railway companies in the U.S., and perhaps for other reasons as well, the public's appraisal of the future of railways is not too bright."

We submit that this is a realistic statement and that the C.P.R. cannot continue to ignore these facts. In fact, during our cross-examination of Mr. Walker (Vol. 64, p. 13403) he did not rule out the possibility of the necessity of financial aid to the C.P.R., although he continued to forcefully oppose the possibility as a matter of principle. The following question and answer appears at p. 13403:

"Q. Would there be any situation when you can see that your Company might agree that a Government guarantee would be preferable?

A. Well, I cannot conceive of any situation in which we would welcome it. The day may come when, as a matter of desperation we have no alternative, but I say it is utterly unsound in principle."

COMMISSIONER INNIS: I am sorry to bring you back again, Mr. Shepard, but at page 4 you say:

"We do say that such aid <u>may</u> become necessary in the future."

Have you any indication as to when that might happen? That is, would you infer, for example, from what Mr. Evans has told us about this 4 per cent increase and the reluctance of the Canadian National to follow, that that is an indication that perhaps that time is now?

MR SHEPARD: No, I do not think we would go as far as to suggest that it is now. I think that we consider that as long as -- speaking as a westerner -- as long

as economic conditions are as buoyant as they are today in the west the situation has not arisen where the burden of transportation charges is greater than can be borne and have the economy survive or develop.

COMMISSIONER INNIS: Then the fact that the Canadian National seems to be put forward in the evidence as on the verge of losing its traffic if further increases are put on, is of no concern to you?

MR SHEPARD: Well, it is very definitely, and of course we have in our main submission suggested Government assistance in the matter of passenger losses. If that should be given effect to, that suggestion, it would obviate the necessity of further increases up to the amount of whatever Government aid might result from that, or, conversely, it might conceivably enable rates to be reduced.

COMMISSIONER INNIS: In other words, you say that the time may have arrived now as far as passenger subsidy is concerned?

MR SHEPARD: Well, yes, we are supporting that subsidy; there is no question about that.

THE CHAIRMAN: That subsidy would be to obviate the necessity of increasing freight rates, wouldn't it?

MR SHEPARD: Yes, it would have that effect. It would remove from the shoulders of the freight payer the burden of having to pay passenger losses.

(2) The matter of what the C.P.R., particularly Mr. Carson, has chosen to call political interference:

My friend, Mr. MacPherson, has already dealt with Mr. Carson's argument with reference to the C.P.R.'s repeated allegation of political interference and with particular reference to the C.P.R.'s view that Section 52(1) should be

repealed. Manitoba fully supports the views on these matters expressed by Mr. MacPherson on behalf of Saskatchewan.

During Manitoba's cross-examination of Mr. Walker, the following questions and answers appear (Vol. 64, pp. 13420 and 13421):

"Q. Turning to paragraph 6 on page 2 (of C.P.R. Brief, Part I), you make reference to what would happen if regulation is carried too far. You state:

' . . . if the problem is allowed to become one hedged about with political controversy and subject to political solutions . . .'

I wondered what you had in mind, in what connotation you used the word 'political' there, because in my understanding there are two meanings. One is a fairly lofty meaning and the other is one that perhaps has a little rough-house type of connotation.

A. Well, one does not like to say anything invidious, but one does know that in the railway world there is a good deal of political pressure from local representatives of all kinds.

Q. What I mean, Mr. W lker, is that by using the word "political" in that context, are you implying that is something bad, from your point of view, of course?

A. Yes, I think I would go that far."

It seems extraordinary that the C.P.R., or any other responsible group of citizens living under a democratic form of government in a country such as C nada, should have the view that the word "political" may not be susceptible of any worthy connotation. The C.P.R. apparently considers the body politic, the Parliament of Canada, capable only of acts of political interference

which the C.P.R. view as necessarily bad, presumably because such acts might interfere with the past system of the C.P.R. for the benefit of Canada even though such acts are necessary because of conditions substantially changed, mainly as a result of the development of competing forms of transportation. We of Manitoba do have faith in the Governments of this country, and we do recognize that what the C.P.R. chooses to refer to as "political interference" may be necessary in order to give effect to national policy devised for the development of Canada's economy.

Then the third matter is that of the allegations of delay on the part of the provinces:

(3) The matter of delay:

My friend, Mr. MacPherson has already dealt with that portion of Mr. C rson's argument accusing the Provinces of delaying tactics in the rate cases during the past three years. I fully support Mr. M cPherson's views.

In his argument on the subject of Canadian National-Canadian Pacific cooperation, Mr. Spence states:

> "If it were a prerequisite of an application for a rate increase that the railways prove all possible economies to have been made, I can think of no surer method of blocking further rate increases for all time, and I think I am safe in suggesting that this is in reality the object that lies behind the proposal of the Provinces." (Vol. 131, p. 23460).

And further, referring to the Provinces:

> "They, themselves, have boasted that every day for which they can delay the coming into effect of a rate increase means a victory for the Provinces regardless of the merits of the case". (Vol. 131, p. 23461).

Manitoba categorically denies that it has ever been guilty of delaying tactics and we say that such

comments are simply unjustified assumptions by counsel. We have always been willing to see that the Railways have sufficient revenues to carry on; provincial appearances on the rate cases are justified, and it is submitted fully justified, to ensure that rates are not raised to too high a level. We go one step further and join the railways in urging that an efficient Board of Transport Commissioners should be able to handle rate cases much more quickly than was the case in the 21% Hearing. The fact that rate cases do not normally occur except at intervals of several years makes it necessary for the Board of Transport Commissioners to be adequately staffed during the interval, so that when rate cases do occur a staff will be equipped to handle the application in an expeditious manner, thus relieving the railways from the burden of having relief postponed if relief is an immediate need. The fact that the hearings resulting in the 8% interim Award occupied only some twenty days; the hearing resulting in the 16% Award occupied only four days, and the hearing resulting in the final 3.4% Award occupied only one day is, we submit, some evidence that the Board having been educated by the very lengthy hearings of the 21% Case was in a better position to deal with the matters subsequently raised before it. Our point is that the Board should at all times be in a position to deal with rate cases in an expeditious manner.

(Recess)

(Page 24444 follows)

MR. SHEPARD: The next point, Mr. Chairman and members of the Commission, has to do with the general subject of the disparity in rate levels east-west and Exhibit 287 as filed by the C.P.R.

(4) Disparity in rate levels East-West, Exhibit 287

In Volume 130, at pp. 23228 and 23229, Mr. Evans makes reference to the Chairman's request during my argument, for a recalculation of Mr. Moffat's figure of 6½% which at the time of Manitoba's main submission represented the disparity in favour of Central Canada in the general level of rates East-West. Mr. Evans filed EXHIBIT 287.

With regard to this Exhibit, I would like to say at the outset that because the Manitoba Government and its technical staff have been, and are today fully occupied with problems arising out of the recent flood, it has not been possible to check the C.P.R. figures. However, assuming that the calculation was made on the same basis as that used by Mr. Moffat, I would offer the following comments, which in our view should be considered at the same time as consideration is given to the fact that the Exhibit shows that today the disparity East-West in rate levels is .75 of 1%.

(a) in the C.P.R. calculation grain is included. It would perhaps be of interest to your Commission if the C.P.R. could prepare an Exhibit similar to Exhibit 287 excluding grain both east and west. For the reasons already outlined in evidence (Vol. 46, p. 8768b; printed submission p. 126) and in argument (Vol. 119, p. 21433), Manitoba

would exclude grain both East and West. Eastern grain rates have increased approximately 70% since 1946, while Western grain rates, because they are statutory, have remained unchanged. Manitoba's view is that increasing rates on grain moving in Eastern Canada does not correct the disparity in rate levels East-West, since Western grain moves at Eastern as well as Western rates;

(b) Exhibit 287 shows the results in actual C.P.R. revenues for the year ended February 28th, 1950.

THE CHAIRMAN: You say "since Western grain moves at Eastern as well as Western rates." You mean when it gets east of Fort William?

MR. SHEPARD: Yes.

It is submitted that until existing rates have been in effect for a full year the Exhibit does not and, indeed, could not be expected, to reflect the current situation. The revenues of the C.P.R. for the year ended February 28th, 1950 would include an 8% interim increase which became effective only on October 1, 1949 -- a period of five months, and would not include the effect of the 16% judgment which was handed down on March 1st, 1950, and of course would not include the effect of the recent 3.4% judgment handed down last week. The C.P.R. did not materially increase competitive rates following either the 8% or the 16% judgments, so that the effect of these horizontal increases will be to aggravate once more a disparity between East-West rate levels.

We offer one final comment on this subject. As the Commission knows rate increases of 21% were applied by the railways to all rates, including competitive rates, effective April 8th, 1948. Following this the 17¢ per

hour wage award resulted in the railways filing an application for a further 15% interim and 20% permanent increase. This application was dated July 27th, 1948. At this time, the railways increased competitive rates a further 15% effective September 1948. Thus between April and September 1948 intra-Canadian rates were raised 21%, while competitive rates were increased 21% plus 15% of 121%; or a total of 39%. This had the desirable effect of reducing the East-West disparity in rate levels. Since September 1948, however, the C.P.R. has proceeded on the basis that competitive rates should not -- and I will give them credit by saying that they could not; that is their view, that they could not be increased further -- be increased further until all other rates have been increased by 39%.

THE CHAIRMAN: What about this action the other day?

MR. SHEPARD: Where the C.P.R. suggested that there should be an increase and the C.N.R. did not feel that an increase was justified.

THE CHAIRMAN: Yes. Do I understand that the C.P.R. actually did increase competitive rates?

MR. SHEPARD: My understanding is that they suggested it.

MR. SINCLAIR: We take the position that we cannot.

THE CHAIRMAN: Because the C.N.R. would not agree?

MR. SINCLAIR: Because if we did we would be running afoul all kinds of complaints and difficulties.

MR. SHEPARD: Thus the C.P.R. in the 20% case filed Exhibits 49/14 and 49/111 showing the revenue it would receive, if, for example, a 20% increase should be granted. In these Exhibits it shows an increase in competitive rates of 5% and an increase in intra-Canadian rates of 20%.

This of course, has the effect of re-establishing the East-West disparity, the fear of which Manitoba has already voiced, both in evidence (Vol. 46, p. 8778 - printed submission p. 127) and in argument (Vol. 119, p. 21432).

The next point I want to comment on is one raised by Mr.Spence dealing with the power of the Dominion Parliament to legislate with reference to the Crown in the right of the Provinces.

(5) The power of the Dominion Parliament to legislate with reference to the Crown in the right of a Province:

In his argument, dealing with the subject of grade crossing protection, Mr. Spence draws to the attention of the Commission the fact that the Crown is not named in Section 259 of the Railway Act, and that the Board has to take the position "... that due to this omission, it cannot order the Provincial Department of Highways to contribute toward the cost of crossing improvement, even in respect of a Provincial highway". (Vol. 131, p.23469). Manitoba's views on this matter generally are found in Volume 119, pp. 21506 et seq.

Mr. Spence on behalf of the C.P.R. has expressed the view that the Dominion Parliament is competent to enact legislation which would permit the Board of Trans;ort Commissioners to order contribution by the Crown in the right of a Province. (Vol. 131, p. 23469).

It appears to be well settled that a municipality may be ordered by the Board to pay part of the cost of a crossing. The provisions in Section 259, as it stands today empowering the Board to order part of the cost of crossings to be borne by a municipality which is "interested or affected" is within the powers of the Dominion Parliament, being ancillayy to its powers to make laws with respect to

railways, even though the legislation incidentally affects a municipality under the control of a provincial legislature. Toronto Railway Company vs the City of Toronto, 1920, A.C. 424 at 440.

I should also like to refer to Coyne, pages 64 and following.

THE CHAIRMAN: Powers to make laws with respect to Dominion Railways.

MR. SHEPARD: Yes, sir.

But that is distinguishable from the case where the Dominion Parliament, legislating on railways, confers the authority to make the order disposing of provincial revenues without the consent of a provincial legislature.

This aspect of Dominion-Provincial jurisdiction was discussed at length in Reference re Waters and Water Power, 1929, S.C.R. 200. In this reference the Governor-in-Council asked the Supreme Court to answer certain questions concerning the respective areas of authority of the Dominion and the Provinces over waters. In the course of his decision, Mr. Justice Duff, discussed the law respecting the assets, the revenues and the sources of revenue of the Provinces given to them by the British North America Act, 1867.

He made the important distinction which exists between:-

(1) Dominion legislation which merely affects or reduces the Province's control over its assets: and

(2) Dominion legislation which has the effect of removing revenues or the sources of revenue from the control of the Province.

The discussion of this view of Mr. Justice Duff is found at page 219 of the Report.

THE CHAIRMAN: What was the result?

MR. SHEPARD: Well, it was quite a complicated matter, Mr. Chairman. I have the report here.

THE CHAIRMAN: You need not take any time on it now.

MR. SHEPARD: Even in the report itself the reporter found difficulty in summarizing the answers to the questions, and they are quite lengthy.

Sections 109 and 126 of the B.N.A. Act vest revenue and sources of revenue in the Crown in the right of the Province -- the latter section being made applicable to all provinces by enactments similar to Section 2 of the Manitoba Act.

An Order of the Board of Transport Commissioners under the suggested amended Section 259 -- that is the suggested amended section as put forward by the C.P.R. -- purporting to bind a province to the payment of money without its consent would appear to be made pursuant to, using the language of Duff, J: "legislation conceived with the purpose of intervening in the control and distribution of provincial assets" - -

THE CHAIRMAN: Did he give his opinion that such legislation would be good or bad?

MR. SHEPARD: He gave his opinion that it was bad ; if it did what this language indicates.

- - even though it would be made under the Dominion's power to legislate on railways. If such an order were to be final and binding on the province merely on promulgation by the Board, the power of the legislature to control and dispose of its revenues would be taken away to the extent of the amount of money in question, and left with a body acting under the authority of a Dominion Statute. Clearly in our submission, the Dominion Parliament

has not power so to usurp the Provinces' powers acting under the guise of legislating on railways.

I should like to add one other comment on this matter. It seems to me that any such attempt by Dominion legislation would amountto an attempt to appropriate Provincial revenue which is the function of the legislature. How could money possibly be ordered to be paid without an appropriation by the legislature? How could an order of the Board of Transport Commissioners be enforced against a Province if the Provincial legislature refused to appropriate the money?

COMMISSIONER ANGUS: Would your objection have equal force if the order were made to be paid out of a grant from the Dominion Government to the Province? Would that be Provincial revenue in the same way as tax revenue?

MR. SHEPARD: Depending on the terms of the grant, Dr. Angus. If the Grant were made generally to the Province, then it would only be spent by the Province on appropriation by the legislature of the Province. If it were a grant made by the Dominion with a string attached to it, "Here is some money; pay it for a certain purpose", then it would be a condition of the acceptance of that money that the string would be looked at and would be followed.

It is because of this constitutional question that in our main argument (Vol. 119, p. 21508) we stated:-

> "Manitoba expresses serious doubt as to whether it is within the competence of the Dominion Parliament to pass such legislation."

THE CHAIRMAN: Of course we are not deciding any constitutional question just now. I remember we were given a case the other day of the Attorney General of Quebec vs. the Nipissing Central as authority against this.

MR. SHEPARD: That is correct.

THE CHAIRMAN: Have you that case there?

MR. SHEPARD: I have not it here. I consider this matter is not clear cut. I think you can argue both sides of it. I think, however, when you come to legislate in the manner suggested by the C.P.R. that there certainly will have to be more clarification of whatever legislation may be adopted because the matter is not cut and dried and as simple as Mr. Spence attempted to make it sound in his submission.

(6) Mr. Sinclair's interpretation of the Manitoba submissions on competitive rates and long and short haul:

In Vol. 132, page 23685, Mr. Sinclair states:-

"Moreover, I say the amendments which Manitoba has suggested on the matter of competitive tariffs and rates has an effect on long-and-short-haul departures far and beyond anything ever suggested by Alberta."

And further at the bottom of page 23691 and the top of 23692, Mr. Sinclair states:-

"The effect of their proposed amendments would be to prohibit under any circumstances long and short haul departures."

Mr. Sinclair would have been more accurate if he had said that in his view, the effect of Manitoba's proposed amendments would have been to prohibit under any

circumstances long and short haul departures. If Mr. Sinclair's view of Manitoba's suggested amendments is correct, I would be the first to agree with him in his statement at p. 23684, where he says in effect that Manitoba's amendments resulted in our taking a position which we did not realize we were taking.

Our main desire in the amendments we have suggested to Sections 328, 329 and 332 of the Railway Act, is to give effect to our recommendations that rates should be handled in only two categories. It would, of course, be part of our proposal that tariffs which in our view should be classified as special freight tariffs should be subject to the tests proposed by Mr. Walker for competitive rates.

Mr. Sinclair apparently feels that by our suggested repeal of Section 329(4) long and short haul exceptions would be prohibited, notwithstanding the fact that we are not recommending any change in Section 314(5). If our intention would be made clearer, we would have not objection to adding the following words at the end of Section 329(3):

> ".....unless the Board is satisfied that, owing to competition, it is expedient to allow such toll."

Mr. Chairman, you probably remember the effect of Manitoba's suggestion. Looking first at Section 328 it is that we delete sub-paragraph (c) or competitive tariffs. Then as to Section 329 our suggestion was that we delete sub-section 4. What I am suggesting is that if our meaning is not clear because we have not altered Section 314, sub-section 5, that we should add to the end of sub-section 3 of Section 329 the same phraseology that occurs at the end of Section 314, sub-section 5, which is as I have just said, "unless the Board is satisfied that, owing to competition, it is

expedient to allow such toll."

THE CHAIRMAN: That last section is 314?

MR. SHEPARD: 314, sub-section 5.

THE CHAIRMAN: Those words are there now?

MR. SHEPARD: Those words are in Section 314.

THE CHAIRMAN: And you would also put them in Section 329(3).

MR. SHEPARD: If the Commission thinks it is necessary. We though we were not doing what Mr. Sinclair says we are doing, and he being a Western trained lawyer I have much respect for his draftsmaanship and the effect of legislation in his view. It may be that we should add the same phraseology at the end of sub-section 3.

THE CHAIRMAN: Do I understand you are proposing with regard to Section 328 that sub-paragraph (c) should be stricken out?

MR. SHEPARD: Correct. In other words, as you may recall, our main argument was that the number of classes of standard freight rates should be increased and would include practically all rates except competitive rates. We suggested that competitive rates should be classified as special freight tariffs.

THE CHAIRMAN: Then, in view of all you have just said, would you still have competitive rates?

MR. SHEPARD: There would be competitive rates but they would not be classified as such. They would be classified as special freight tariffs.

THE CHAIRMAN: They would be allowed to meet competition?

MR. SHEPARD: It was never our intention that it should be otherwise. My only reason for raising it in reply is to clarify the position that the Manitoba Government believed it had taken.

It is perhaps hardly necessary in closing to mention that Manitoba does not agree with many other matters referred to in the C.P.R.'s arguments.

THE CHAIRMAN: But you have a strong suspicion?

MR. SHEPARD: Yes.

However, as stated in opening, Manitoba is content to rest on the evidence and argument already on the record, and does not consider any further reply necessary, since further comment on the many matters covered in our main argument would, of necessity, be repetitious of what we have already submitted.

I should like to thank the Commission once more.

(Page 24456 follows)

ARGUMENT IN REPLY BY

MR. J. J. FRAWLEY

THE CHAIRMAN: You are speaking for Alberta, Mr. Frawley?

MR. FRAWLEY: I still speak for Alberta. Strange as it may seem, there has been no change in my retainer since I last presented my argument, even though some of the things said about me by the Canadian Pacific Railway did reach the cities of Calgary and Edmonton and obtained a lot of prominence in the Calgary and Edmonton papers; but, as I say, strange to relate there has been no withdrawal of my retainer by the Government of the Province of Alberta.

My lord and members of the Commission:

I intend to confine my remarks in reply to the following matters: Equalization, Industrial, Location, Long-and-Short-Haul, and a brief word in closing in the matter of Subsidy.

Dealingfirst with equalization:

EQUALIZATION

Standard Class Rates

Dealing with Standard Class Rates, Mr. Sinclair at p. 23596 protests that I had made out "no case to have the standard mileage class rate removed". The Commission will recall that I had argued that the present standard mileage rates and the present distributi rates be replaced by a single scale approximating the present level of Distributing Rates.

I did stress on various occasions that the Standard Class Rates were largely paper rates which only a small percentage of the traffic was still forced to pay.

But now I find our position wholly conceded out of Mr. Sinclair's own mouth. Mr. Sinclair said at p. 23711:-

> ".....but if our equalization pattern is accepted we will have a distributing class pattern that will be applicable between any two points in Canada, that will take care of that situation."

(Mr. Sinclair was referring to the use of the Standard Class Rates in international traffic.).

I think it will; but obviously such a proposal makes the standard class rates 100% paper rates. For if distributing rates are to apply between any two stations in Canada, it is impossible to imagine any movement of traffic anywhere in Canada where the Standard Rates would ever have to be used.

Section 314

I should like to clarify some points at issue between the Canadian Pacific and Alberta on the question of our statutory amendments regarding equalization.

Now, that sub-title is a little misleading. I am referring not only to Section 314, but to two or three other sections which are brought to the attention of the Commission.

1. Is the present Section 314(1) of the Railway Act an equalization section?

At page 23607 Mr. Sinclair said;-

> "Section 314 as it appears at present in the Railway Act is the equalization section of the Act."

and at p. 23595 Mr. Sinclair also said:-

"In our submission, Section 329(1) setting out what the standard freight tariffs are to specify, should not be used as a section dealing with equalization."

Section 314 cannot be interpreted as an equalization section because of the only possible interpretation which can be placed upon the phrase "same line or route."

At p. 15938 I put the following question to Mr. Jefferson:-

"Q. Do you say that these do pass over the same line or route, that is the two commodities, the asphalt moving in Western Canada and the asphalt moving in Ontario and Quebec? Do they, or do they not, pass over the same line or route.?"

"A. I would say they do not."

and on p. 15939:

"Q. Well, would not that follow Mr. Jefferson? If you say that asphalt, moving from the same origin is passing over the same line or route, then it follows from your interpretation that to pass over the same line or route they would have to move from the same origin to the same destination?"

"A. That is right, or between those two."

Mr. Jefferson's answers render quite untenable the position Mr. Sinclair attempted to take in argument.

Under Substantially Similar
Circumstances and Conditions

If Section 314 is an equalization section, then it should follow that there is no onus on the shipper to establish the unreasonableness of a rate. It should be

sufficient for the shipper merely to show an inequality in order to put the onus on the railways to justify that inequality. In argument Mr. Sinclair endeavoured to show -- because his positionon Section 314 drove him to it -- that such an onus was in reality on the railways.

At page 23637 the following interchange took place between the Chairman and Mr. Sinclair:

> "The Chairman: I know, but then it (i.e. the traffic)" -- that is my interpolation) should move at the same rates in all parts of the conntry, if it were not for the dissimilarity of conditions and circumstances. Isn't that so?
>
> "Mr. Sinclair: That is right -- traffic and operating conditions."

At page 23636 Mr. Sinclair was discussing with the Chairman the position of a shipper whose rate was higher than that of a shipper in another part of the country, and Mr. Sinclair said:

> "He would say to the Board, here is a rate between A and B in Eastern Canada of 50 cents. Now that is a reasonable rate in Eastern Canada; why should the rate be higher in Western Canada? Then the onus is upon us (i.e. the railways) to explain why we have this difference in rates.
>
> "The Chairman: Then you would show your different conditions and circumstances.
>
> "Mr. Sinclair: That is right, and I say that that completely justifies it."

Mr. Sinclair's position in this matter is quite untenable. If there is an underlying requirement of equality of rates in all parts of the country contained

in this Section, then clearly the onus should be on the railways throughout.

But quite contrary to Mr. Sinclair's argument the fact is and has been that there is a real onus on the shipper regarding reasonableness of rates, as Mr. Jefferson's evidence makes quite clear.

At page 15933, I questioned Mr. Jefferson on the existing differences between asphalt mileage rates in Eastern and Western Canada.

"Q. Now you say, that there is no onus on the railways to justify the reasonableness of these rates.

"A. Not unless there is a complaint.

"Q. And if there is a complaint, you still have no onus to discharge until, you say, the complainant has finished telling his story?

"A. That is right.

"Q. You say it is not sufficient if the complainant should go in and put the mileage scales on the table in front of the Board and ask the Board to draw a conclusion as to the reasonableness or otherwise just from looking at the mileage scales?

"A. No, I don't think there is any competition in the marketing of asphalt in Western Canada as compared with Eastern Canada."

Mr. Jefferson certainlyaccepts no onus as to the reasonableness. He clearly expects the shipper to prove something more than mere differences in rates. It is clear that, according to Mr. Jefferson, in merely pointing to a difference in rates the shipper has not made out a prima facie case of a violation of Section 314.

The clearest statement as to how much onus the alleged equalization section (Section 314) puts on the railways is the one made by Mr. Evans at page 13192:

> "I think the point ought to be made that our rates having had the approval as to the standard rates under Section 330 are prima facie, just and reasonable rates."

In other words, the railways have no onus at all.

What the Board has required from the shipper is not a comparison of rates but proof of unjust discrimination and where that has not been shown the Board has shown no further interest in regional rate comparisons per se.

Our proposal makes a clear separation in the Act between equalization and discrimination and is designed precisely to overcome the shortcomings of Section 314 as an equalization section. We do this by divorcing the phrase "under substantially similar circumstances and conditions" from any connection with equalization.

Our removal of the phrase "under substantially similar circumstances and conditions" from Section 314(1) has aroused a protest from Mr. Sinclair. He goes as far as to say, at page 23608:

> "Alberta by eliminating the words 'in substantially similar circumstances and conditions' has eliminated the basis of our law against unjust discrimination."

The basis of this statement by Mr. Sinclair seems to be a confusion between the two phrases "same descriptions of traffic" and "under similar circumstances and conditions" in present 314(1). Mr. Sinclair apparently thinks that unless a particular description of

traffic appears in the freight classification it cannot be used to make a distinction between commodity rates. At page 23609 Mr. Sinclair said:

". . . For instance, let us take salt. That is taken care of, as I recall it, in the classification. For instance, salt can move in bulk or in packages. Let us say it was not taken care of in the classification. Then it would not be moving under substantially similar circumstances and conditions.

"The Chairman: Would it not still remain that anybody who brought packages of salt to you to be shipped from point A to point B would pay the same rate as any other person?

"Mr. Sinclair: Unless it was taken care of in the classification Mr. Frawley would have me moving salt, no matter how I got it, for the same amount.

"The Chairman: As what?

"Mr. Sinclair: Between two points, whether it is in packages or otherwise.

"The Chairman: Oh, I do not think so.

"Mr. Frawley; I certainly never said that."

As to this, I say that there is nowhere any mandatory language either in the Act as it stands, or as we have proposed to amend it, which limits the distinctions in descriptions of traffic to those that happen to be listed in the Freight Classification. The Classification in no way prevents the railways from making special commodity rates on articles not listed in the Classification. They are doing this every day. Nor does it prevent them from making rates for different packaging

than that provided for in the Classification .

In my submission "descriptions of traffic" is a phrase under which all distinctions relating directly to the nature and use of the commodity are permitted today. I know of no narrow interpretation ever having been placed upon this phrase. Difference in packaging, in carload minima, in export or import traffic, can all quite properly be designated as distinctions in descriptions of traffic, as indeed they are today.

Mr. Sinclair appears to have a twofold objective in his attack on the proposed amendment of Section 314 ss. 1:

(1) to retain as a section prohibiting unjust discrimination; (as to this, there is no disagreement) and

(2) to retain it as <u>the</u> equalization section which he now alleges it to be.

This Section 314 simply cannot and should not be made to do double duty. The history of the equalization issue exposes the inadequacy of Section 314 equalization section. I can understand the Canadian Pacific's eagerness to retain the phrase "under substantially similar circumstances and conditions" for in the past it has served them well wherever equalization was the issue. It was only necessary to refer to any difference in conditions regionally -- whether density of traffic, cost of operation, flow of traffic -- to render Section 314 inoperative.

For example, at page 57 of Part I of the Canadian Pacific Brief it is said:

"40. It is obvious, in the submission of the Canadian Pacific, that the cost of

"service principle cannot be applied in the making of individual rates or scales of rates."

But this does not prevent Mr. Sinclair in his argument, at page 23633, from making the following statement:

"If an industry wants a specific commodity rate where the costs of movement are lower because of direction or density of traffic or other operating costs and the traffic could not move at the rate that was in effect in some other region and if the two industries were not competing in a common market, the railways would give a lower specific commodity rate to one industry than to another so as to get the traffic moving and to get revenue. An example of this is the sugar beet rates in Alberta, which rates are lower in Alberta than in Ontario."

I think it is evident from Mr. Sinclair's argument what the function of the phrase "under substantially similar circumstances and conditions" is with regard to equalization. Mr. Jefferson in his evidence (see pp. 15896 and 15899) and Mr. Sinclair in his argument have completely failed to offer one instance of a rate offending equalization which was made because of different operating and traffic conditions. The Canadian Pacific has offered a theory of rate determination based on a number of factors which apparent are of little practical importance. It has proved useful, however, to the railways to invoke now one and now another as the occasion requires in order to be able to say that circumstances and conditions are dissimilar. And this quite regardless of whether any of these factors enter into rate-making in any consistent fashion.

Mr. Sinclair cited the sugar beet rates in Alberta as a case in point. That was an unfortunate example for his purpose. The Alberta sugar beet rates are truck-

competitive rates and so marked in the tariffs. They do not illustrate a difference in specific non-competitive commodity rates based on particular circumstances and conditions, which is what Mr. Sinclair was endeavouring to show.

Now, before concluding the part of my reply dealing with equalization, there has been so much confusion by both Mr.Evans and Mr.Sinclair, and they devoted so much time endeavouring to upset my argument with respect to equalization, to hold tenaciously to what they have held through the years, that I have written down here four things which I think may help to pull together my plan of equalization:

1. Equalization of standard rates is provided for in section 329.

2. Equalization of special rates is provided for in section 329A, sub-sections (1) and (2).

3. There is no equalization of competitive rates.

4. Section 314 constitutes no part whatever of our equalization scheme. Its purpose is limited to preventing unjust discrimination.

I now pass to Industrial Location.

THE CHAIRMAN: Well, it is time to adjourn.

(The Commission adjourned at 4.45 P.M. to meet again at 10.30 A.M. on Wednesday, May 31st, 1950.)

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ROYAL COMMISSION

ON

TRANSPORTATION

EVIDENCE HEARD ON

MAY 31 1950

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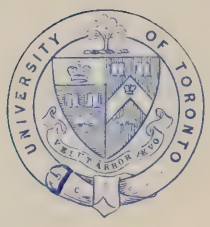

ROYAL COMMISSION ON TRANSPORTATION

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Wednesday, May 31,1950
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ROYAL COMMISSION ON TRANSPORTATION

OTTAWA, ONTARIO
WEDNESDAY
MAY 31st, 1950.

THE HONOURABLE W.F.A. TURGEON, K.C., LL.D. - CHAIRMAN

HAROLD ADAMS INNIS - COMMISSIONER

HENRY FORBES ANGUS - COMMISSIONER

- - - - - - -

G.R. Hunter
Secretary

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J. Paul Barry	Province of New Brunswick
C.D. Shepard	Province of Manitoba
F.D. Smith, K.C.	Province of Nova Scotia

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Ottawa, Ontario,
Wednesday, May 31, 1950

MORNING SESSION

THE CHAIRMAN: Very well, Mr. Frawley.

ARGUMENT IN REPLY BY MR. FRAWLEY - Continued.

MR. FRAWLEY: My lord and members of the Commission: I had just reached the end of the "Equalization" section of my reply. I now proceed to discuss industrial location.

INDUSTRIAL LOCATION

Mr. Evans has raised some points in connection with our Industrial Location proposal upon which I must comment.

1. His principal argument is:

"that it is impossible to give effect either to the value of service principle or to the cost of service principle and still give effect to what Alberta proposes." (p. 23346)

Closely allied with this is his statement that:

"it will be noted by your Commission that the amendment proposed by Alberta does not make any provision such as Professor Stewart agreed should be made by way of recognizing the cost of service or the value of service principle, nor for that matter of the reasonableness of the rates per se." (p. 23355).

Again at page 23346:

"The Chairman: Pardon me, would the amendments submitted by Alberta leave the Board this discretion that Professor Stewart said they should have?

Mr. Evans: No sir, definitely not."

Quite on the contrary, Alberta's proposed amendment leaves a discretion with the Board to consider the

value of service principle, the cost of service principle or the reasonableness of the tolls. Our amendment does not make it mandatory for the Board to establish rates that do not hinder producer location. I say this because, as has been said so many times, the cornerstone of the rate sections of the Act is that rates must be just and reasonable. This requirement is operative in connection with our new section 321A just as it is with other sections. This was brought out very well in a discussion which your lordship had with me when I was making my argument.

At page 22116 and 22117 we were discussing the second proviso in our section 321A when your lordship said:

> "The point is, why clutter up the Act with repetitions here and there of the same idea. The dominant idea is that all rates must be just and reasonable."
>
> "Mr. Frawley: We agree, my lord . . ."

As a result of this discussion we withdrew the second proviso in our section.

Further on at p. 23349 Mr. Evans said:

> "The only way you can find the relationship under present principles corresponding to what he wants, would be a sheer accident."

He is quite wrong.

It is absurd to suggest that the value of service principle or the cost of service principle defines a rate to the precise cent.

The situation with respect to these two principles may be summed up in Dr. Locklin's words taken from p. 152 of his book:

> " . . . The value of the service sets the upper limit beyond which the traffic will not move. Prime or variable costs, on the

other hand, fix the lower limit below which the rate must not fall."

We recognized the soundness of Dr. Locklin's proposition when we said we wished a rate relationship which does not hinder, or to use Dr. Angus' words, a relationship which is "neutral or better". An example will make this point clear; take the rates on meat and the rates on livestock from Edmonton to Vancouver. First, let us look at the cost of service principle. Does that principle say that the cost of shipping meat between these two points is exactly $2.00 and the cost of shipping livestock is exactly $1.00? Of course it does not, and the railways would be the first to say "you cannot get an accurate cost figure for that movement". What the cost of service principle does is to set the lower limit to the rate. It hinges upon the variable costs or what are loosely called out-of-pocket expenses. Thus, the cost of service principle might be fully satisfied if, for example, the rate on meat were anything . more than $1.00 or the rate on livestock anything more than 75¢.

Now what about the value of service? Here again Mr. Evans would not say that a precise figure can be indicated. At best, the value of service principle will set the ceiling above which the rate cannot go without stopping the movement of the traffic. Ignoring the relationship for a moment -- and I will come back to deal with that later -- this might mean that any meat rate below $3.50 and any livestock rate below $2.00 would satisfy the value of service principle.

Thus, in our example any rates on meat between $1.00 and $3.50 satisfy both the value of service and cost of service principles and similarly any rates on livestock

between 75¢ and $2.00 would satisfy both these principles.

Even within a range such as I have indicated in my example the Board, under 321A, is not required to establish the relationship applied for if unjust and unreasonable rates would result.

I return for emphasis to my first point. If we grant this point, and in a particular case the other principles were violated, then the "just and reasonable" requirement -- there is a correction here, my lord; there is a typist's error; the only words intended to be in quotation marks are "just and reasonable" -- precludes the Board from establishing the relationship we are seeking.

When Mr. Evans said at p. 23356 "we must be prepared to throw overboard the value of service principle if we accept Alberta's proposal" he indicated that he had not clearly thought through his position. I trust that I will not be accused of plagiarism when I use expressions like that. I say the value of service principle is irrelevant to our proposal because it is -- if I may use the word -- neutral. The value of service principle applied to either rate in a rate relationship produces precisely the same effect on either from the standpoint of the relationship, and consequently from that standpoint can be ignored. An example will make this apparent.

THE CHAIRMAN: You say "the value of service principle is irrelevant to our proposal because it is, if I may use the word, neutral." Do you mean the proposal?

MR. FRAWLEY: Yes, the value of service principle.

THE CHAIRMAN: Is neutral?

MR. FRAWLEY: The value of service principle.

THE CHAIRMAN: That is what you say is neutral?

MR. FRAWLEY: No. That is right. You are quite right, my lord; our proposal is neutral.

Suppose two packer buyers obtain livestock at production point A. Both wish to sell meat at consuming point B. They have the following in common:

1. They both pay the same price for their livestock.
2. They both z get the same price for their meat.
3. They both have the same processing costs.

The point of difference between them is this: One processes at A, the other processes at B. Hence, one ships livestock and the other ships meat.

That the value of service principle is irrelevant is immediately apparent. Both packer buyers are selling in the same market at the same price and hence the total shipment either in the form of livestock or in the form of meat must have the same demand for transportation. This follows because the end product is identical and the price is identical, and hence the demand for transport will be identical. If the demand for transport is the same, the value of service to the total shipment -- which may be either in the form of meat or livestock -- must be the same.

This example makes it clear that Mr. Evans' talk of violating the value of service principle is absurd.

At page 23357 Mr. Evans, speaking about the Hormel Case, said:

"In that case they made the westbound relation between meat and livestock the same as the eastbound relationship, and they had previously in some case fixed the eastbound

relationship, but as far as I know --"

And these are the important words.

" -- there has never been acceptance of this weight lost in process principle of relationships."

The rest of the quotation was not germane; that was a typist's error in quoting that part of what Mr. Evans said. I conclude that quotation at the end of "relationships" and strike out the balance of it.

I refer the Commission to the following passage from page 57 of the Hormel Case:

"The assailed rates do not permit free movement of meats from the midwest to the Pacific coast. In the case of the products of hogs this is due almost wholly to the fact that the rates on meats are excessive as compared to those on the live animals."

It is obvious that the rates could only be "excessive" because of the relationship between the weight of the hog and the weight of the product from that hog or, in Mr. Evans' terms, because of "the weight lost in process".

(Page 24477 follows)

The Canadian Pacific has characterized our proposal as impractical. If the action of the Interstate Commerce Commission is impractical -- if the Interstate Commerce Commission has ignored the recognized principles of rate-making -- if the actions of the Interstate Commerce Commission have resulted in a great disturbance to existing industry in the United States, then perhaps the Canadian Pacific is correct. But if these things have not happened in the United States -- and the Canadian Pacific has led no evidence to the contrary -- then it is absurd to argue that the adoption of our proposal, a proposal which conforms to the practice of the Interstate Commerce Commission, will have these or any ill effects.

I now pass to developmental rates. I should say, perhaps apologetically, that this is a small point, but I am bringing it to the Commission's attention for a particular purpose which will be observed as I proceed.

DEVELOPMENTAL RATES

At page 23712 Mr. Sinclair, in referring to our proposed amendment 329A ss. (3) regarding Developmental Rates, said:

> "I say that the result of Alberta's amendment can be summed up in this way: What Alberta is asking is that by statute preferential rates should be given. Now, the position of Canadian Pacific is this, that we must have compensatory rates from the outset."

I regard this statement as perhaps the classic example of facing two ways in order to oppose, at any cost, a suggestion that does not originate with the

Canadian Pacific. As to the added confusion of the issue introduced by Mr. Sinclair's immediate reference to the compensatory nature of rates, I made it quite clear in the course of my argument that developmental rates were to be subject to the same conditions as all other rates as rdgards their compensatory nature.

Our Section 329A, ss. (3), was put in to allow the railways to make departures from equalization beyond those dealt with in the preceding subsections of 329A. The language is "may" and not "shall". How this can be twisted by Mr. Sinclair to become a "statutory preferential rate" is incomprehensible.

One might as well say that all competitive rates are statutory rates because the statute permits them at the discretion of the railways. Furthermore, the purpose of the section is clearly stated as being that "of assisting industry or of developing traffic which otherwise might not exist". As if the Canadian Pacific has not been pleading this very cause -- that equalization should not restrict its freedom to make rates to move the traffic! Does Canadian Pacific now say that existing rates put in on the railway's own initiative to move traffic are preferential rates?

On the one hand we have a strong plea for the allowance of exceptions to equalization. But when some concession is made to that plea, then we find such exceptions stigmatized as preferential rates.

LONG AND SHORT HAUL

I. Mr. Evans sounded the keynote of the Canadian Pacific theme on the Long and Short Haul Rule when he said at page 23207:

"I content myself with the submission that no change in legislation is necessary to provide for any remedy which may reasonably be necessary in the event of any hardship being experienced."

I will address my Reply almost wholly to the attack made upon our subsection 2. As I proceed it will of course become quite obvious what I am speaking of, my lord, but to bring it back to the Commission, our subsection 1 set up the machinery which required the railway to go to the Board for authority to commit long and short haul discrimination. As the Commission will recall, they must prove there is competition, they must prove that the toll at the competitive point is not lower than necessary to meet the competition, and they must prove that the toll at the competitive point is such as to warrant a reasonable expectation that there will not be collateral losses, and so on. The section is 314A. I was just reviewing it in a word. It is the second subsection which has caused all the alarm, all the attack and all the invective, but of course that goes along with it.

MR. SINCLAIR: The understanding, too.

MR. FRAWLEY: I am afraid, Mr. Covert, I will have to leave Mr. Sinclair in your hands regarding these interruptions.

MR. SINCLAIR: I am just doing what Mr. Frawley did during my argument.

MR. FRAWLEY: This is reply. I know of no right to sur-rebuttal.

As we might expect, Mr. Evans concludes that the adoption of our subsection 2 will result in "a breakdown in the entire rate structure" (p. 23217) or, alternately, he says it will produce "chaos" (p. 23218). Of

course, neither of these things will happen and in my submission our amendment is entirely practical and workable.

The experience in the United States is an obvious and a direct answer to Mr. Evans' contentions. In the United States they have gone much further than we have suggested and, far from producing "chaos" or "breakdown", the United States practice has produced a host of satisfied railway customers and, I venture to suggest, satisfied railways. I say the railways are satisfied for two reasons.

THE CHAIRMAN: In the United States do they use the same language you use here?

MR. FRAWLEY: I think I can say almost identical in connection with subsection 1.

THE CHAIRMAN: Because in respect to that language I called your attention to something the other day which I will call your attention to again. In that subsectinn 2 you say "any toll". Remember this toll is one from Toronto to Vancouver.

MR. FRAWLEY: For the like description of goods, and so on, yes, my lord, any toll.

THE CHAIRMAN: "Shall at all times be just and reasonable".

MR. FRAWLEY: At all times be just and reasonable.

THE CHAIRMAN: That is within the meaning of Section 325 of the Act. A just and reasonable toll is one which is just and reasonable to the carrier and to the shipper.

MR. FRAWLEY: Oh, yes, my lord.

THE CHAIRMAN: That toll goes from Toronto to Vancouver. It is reasonable to the shipper because it is low. The shipper is not complaining about it; he

wants it. The railway is not complaining about it. Although it is low they want it too. What you really have in mind is that the existence of that toll makes the toll which the shipper from Toronto to Calgary pays unjust and unreasonable because it becomes too high by comparison. I call your attention to that. In my opinion that is how your language will be construed. Because you put it that way your language will be construed that the justness and reasonableness of the toll means the toll from Toronto to Vancouver.

MR. FRAWLEY: May I take you to the section?

THE CHAIRMAN: And that toll is just and reasonable to the railway.

MR. FRAWLEY: Yes.

THE CHAIRMAN: And just and reasonable to the shipper.

MR. FRAWLEY: Yes. May I take you to the section. It is really the toll to the intermediate points to which this section is directed.

THE CHAIRMAN: I know but you do not say that.

MR. FRAWLEY: Yes, I will read it.

"Any toll which for the like description of goods or for passengers carried in the same direction over the same line or route is greater for a shorter than for a longer distance within which such shorter distance is included" -- "Is greater" -- that is the toll to Calgary.

" -- shall at all times be just and reasonable" -- The rate to Calgary.

" -- when compared to the toll for the longer distance."

That is the toll to Vancouver. I only call your

attention to that because I think it must be read very exactly.

THE CHAIRMAN: Where do you say that?

MR. FRAWLEY: In my subsection (2).

THE CHAIRMAN: You say:

"Any toll which for the like description of goods or for passengers carried in the same direction over the same line or route is greater for a shorter than for a longer distance within which such shorter distance is included shall at all times be just and reasonable when compared to the toll" --

Oh, yes.

MR. FRAWLEY: I am not directing myself to the rate to Vancouver. I am directing myself to my rate, and with respect I think that puts a little different complexion on it.

(Page 24787 follows)

THE CHAIRMAN: I see; it is reversed.

MR FRAWLEY: Yes, my lord.

THE CHAIRMAN: But even at that you still have this to take into consideration, that you would in the first place say that in itself it is prima facie just and reasonable

MR FRAWLEY: I would say that it is first---

THE CHAIRMAN: Prima facie just and reasonable.

MR FRAWLEY: No, my lord, I do not say that.

THE CHAIRMAN: I mean, supposing you leave out of consideration the Toronto-Vancouver rate.

MR FRAWLEY: Yes, leave that out for the moment, my lord.

THE CHAIRMAN: Then you would say the Toronto-Calgary rate by itself is just and reasonable.

MR FRAWLEY: Well, the Board must find that it is just and reasonable.

THE CHAIRMAN: Well, haven't they found it? They fixed it.

MR FRAWLEY: No, my lord; you see---

THE CHAIRMAN: The rate which is charged to the shipper from Toronto to Calgary is not more than the Board allows; it is less than that.

MR FRAWLEY: The rate from Toronto to---

THE CHAIRMAN: To Calgary.

MR FRAWLEY: To Calgary, is---

THE CHAIRMAN: Less than the Board allows.

MR FRAWLEY: You mean less than the standard maximum, sir? Yes.

THE CHAIRMAN: Now, the Board fixes nothing but just and reasonable rates, prima facie, I would say -- prima facie, and I think that is admitted; the rates you find fixed by the Board are just and reasonable. Now, they

are subject to attack, of course.

MR FRAWLEY: My lord, might I associate myself there with what I think Mr. Barry put to you one day? I think your lordship directed the same question to him. Frankly, I find it very difficult to say that just because the rates have been filed, I mean these maximum standard class rates, simply filed and rubber stamped by the Board, they are just and reasonable. I know that is the Canadian Pacific's position.

THE CHAIRMAN: Is it fair to use the word "rubber stamp"?

MR FRAWLEY: Oh, yes, my lord, I say it is fair. They simply present a scale of rates to the Board, maximum rates, which are only to be used for two per cent of the traffic.

THE CHAIRMAN: Pardon me a moment. You talk of the standard rates?

MR FRAWLEY: Yes, I am talking of the standard rates; and the Canadian Pacific say to the Royal Commission, "Those are just and reasonable." I do not accept that, with great respect, because, as Mr. Barry I thought very properly said---

THE CHAIRMAN: Have we not to conclude that prima facie -- I do not go any further than that -- they must be just and reasonable, because it is the Board's duty to fix and maintain just and reasonable rates?

MR FRAWLEY: Well, my lord, I do not want to reach out for odd expressions, but they may be potentially just and reasonable, something of that sort, because they carry no traffic, because as soon as they began to carry traffic---

THE CHAIRMAN: You say they carryno traffic, but then the traffic is carried at even lesser tolls.

MR FRAWLEY: Yes, my lord; that is all, my lord.

I simply mean that as long as those rates do not carry traffic, I think it is a rather impractical thing to say they are just and reasonable.

THE CHAIRMAN: The point is this: What would you say about the rates between Toronto and Calgary, leaving out of question entirely the rates from Toronto to Vancouver?

MR FRAWLEY: Leaving out the rates entirely from Toronto to Vancouver? I say that they are too high, my lord. I say that they are far too high compared mileage-wise---

THE CHAIRMAN: You are comparing them to Vancouver again, are you?

MR FRAWLEY: No; comparing them with rates, my lord, similarly to Saint John, comparing them, my lord, for instance, with the rate from Racine, Wisconsin, to Saint John, New Brunswick, or some similar mileage, and they are far, far greater.

THE CHAIRMAN: You say they are too high.

MR FRAWLEY: They are too high, my lord.

THE CHAIRMAN: You are for equalization of rates.

MR FRAWLEY: Yes, I am for equalization of rates.

THE CHAIRMAN: Still, there they are from Toronto to Calgary.

MR FRAWLEY: Yes, there they are.

THE CHAIRMAN: They are not being attacked until the railway puts in a competitive rate to Vancouver.

MR FRAWLEY: Oh, well, that is the principal reason for the attack.

THE CHAIRMAN: Well, then, you see, I think it would have to be---

MR FRAWLEY: Perhaps, my lord, I should say that we---

THE CHAIRMAN: Your complaint is not against the rate from Toronto to Calgary in itself; it only arises when you compare that rate to the rate from Toronto to Vancouver.

MR FRAWLEY: My lord, no. In fairness to my case, I think I must always point out that these rates have been going up and up and up by the use of this vicious horizontal percentage increase until now---

THE CHAIRMAN: Well, that is a different question.

MR FRAWLEY: Well, except that they now have reached a stage, my lord, where they are $2.77 to move a hundred pounds of---

THE CHAIRMAN: I am not saying that they would be found just and reasonable upon inquiry; I am not saying that, but here you do not attack them except in relation to the rates---

MR FRAWLEY: In the statute, I do, sir.

THE CHAIRMAN: And you seem to make that a ground of reasonableness and as a comparison between the two.

MR FRAWLEY: Yes, my lord, in this statute, that is what I do. I set up a requirement that the reasonableness to Calgary must be compared with the reasonableness to Vancouver.

THE CHAIRMAN: Then the answer to that is, well, the rate to Vancouver is a competitive rate.

MR FRAWLEY: That is the answer that has been given, of course. I have something to say about that; I have quite a lot to say about that as I develop my argument.

THE CHAIRMAN: I am just warning you about the language of your amendment.

MR FRAWLEY: I am glad your lordship brought it to my attention, because I do want your lordship to under-

stand that I am directing this to my rate, not to the Vancouver rate.

THE CHAIRMAN: Yes, I see that.

MR FRAWLEY: I say the railways are satisfied for two reasons:

1. As Dr. Locklin has pointed out: in the last 20 years there has not been a serious attempt by the railways to get fourth section relief on transcontinental traffic, p. 11818;
2. I am convinced that the American roads have learned something which has as yet escaped our friends of the Canadian Pacific. It is this. The American roads found that a policy of maintaining high rates at non-competitive points when compared to competitive points very effectively stifled development in the non-competitive areas and drove it to competitive areas. At the competitive points the railways were in the anomalous position of granting low rates to get only <u>part</u> of the traffic whereas had they persuaded - with reasonable rates - the establishment of industry at the non-competitive points, they would get <u>all</u> the traffic.

I do not suggest that the United States Railways learned this lesson without instruction from the Interstate Commerce Commission. Even the casual observer cannot fail to be impressed by the development during the past twenty years in the so-called Inter-Mountain region - in Utah, Washington, Idaho and other states in that area. And there cannot be the slightest question concerning the important part played in that development by the freight rate structure which grew up under the Fourth Section of the Interstate Commerce Act.

I would just like to stop there to say, my lord, that we sent our people there and we talked to people in Salt Lake City and in Spokane, and, if I might suggest it, it might be a useful enterprise if the Commission's research staff went there and talked to those people, so there would be no misapprehension as to the importance and the essential quality of the removal of long and short haul discrimination and the part that it played in the building up of that so-called Inter-Mountain Region.

THE CHAIRMAN: Did it lower rates to the intermediate points?

MR FRAWLEY: Yes, it did, my lord.

It is quite understandable to me why an industrialist will go to Vancouver instead of Calgary. In Vancouver he knows that he can always temper railway logic with the threat of a boat. In Calgary - under present conditions - he can be equally sure that he will have to accept not only his own share of railway costs but also a part of the share of persons at competitive poinss whose contributions to overhead are very slight.

The Commission has no doubt been struck by the fact that long and short haul discrimination appears to be a major problem only in Western Canada.

There are two reasons for the absence of similar complaints in Eastern Canada:

(a) In the first place the whole area from Sudbury to Windsor to Montreal is one rate blanket on transcontinental traffic. The very material difference in the competitive conditions between the hundreds of stations in this huge area, and indeed the complete absence of competition in many instances, has not had a selective effect on the rates which are published to Vancouver.

It is only upon the proposition that it is valid to compare the reasonableness of the rate from Vancouver to Sudbury, a non-competitive point, with the rate from Vancouver to Montreal, a competitive point, that the creation of the Eastern Canadian rate blanket has been or can be justified. Giving Sudbury the same rate as Montreal has not resulted in any demand - successful or otherwise - by Sudbury to have its rate scaled for distance on the basis of the Montreal mileage, although the difference in mileage is 447 miles. Canadian Pacific have professed to see a great danger in our proposal in the event that the intermediate rate was lowered nearer to or to the competitive rate. The experience in Eastern Canada shows their fears to be completely false.

(Page 24494 follows)

(b) In the second place I wish to direct the attention of the Commission to the International Rates Case 1909 (the case itself was in 1907) Sessional Paper 20C Vol. 43 No, 11 p. 5. There we find that the Town Tariff structure in Eastern Canada was prescribed by the Board for the express purpose of removing long-and-short-haul discrimination. In that case the Board accepted the lower rates from United States Border gateways to Montreal, for example, as a measure of the reasonableness of rates to or from intermediate points such as Brantford, for example.

I want to further interpolate at this point that that case also established the Town Tariffs and thereby the rates to points other than intermediate points were similarly affected. I refer to rates to points like Owen Sound which is not intermediate between Detroit and Montreal: they were affected by the competitive situation existing between Detroit and Montreal.

Now, my lord, this was in 1907, and Ontario had its long-and short-haul problem solved in 1907. In 1950 Calgary and Edmonton are paying on canned goods 197% of the Vancouver rate. I say to the Commission with every respect, to the Commission, to the railways, and everybody else, but I say to the Commission that on any sort of basis that sort of thing is not good enough. I say that the Railway Board and the railways themselves must share the responsibility for the fact that from 1907 when the Ontario situation was cleaned up, there has been nothing at all from the Board of Railway Commissioners except these words of Chief Commissioner McKeown that our case was not very impressive. I will have just something

else to say but I call your lordship's attention to the kind of approach that was made to the case.

That was in the Rates Case which my friends, the railways, have quoted with exultation and have put into their Brief, that is the General Freight Rates Investigation. It is reported in 1933 C.R.C. commencing on page 127, and the paragraph -- I think I can go so far as to say the two paragraphs -- devoted by Chief Commissioner McKeown to our long-and-short-haul grievance appears at page 136. He is talking there about the effect on the distributors and he says that they were not very impressive. I think out of both Mr. Evans' mouth and Mr. Sinclair's mouth we have heard: "The Board did not think they were very impressive." Well, my lord, I want to call your attention a page or two later in this reply of mine to two sets of rates which will come into force on the sixteenth day of this month and then ask whether or not they are impressive.

II. At p. 23697 Mr. Sinclair also alleges that whereas our subsection 1 is the equivalent in principle of the United States legislation our subsection 2 introduces an entirely new principle. This is incorrect. I refer the Commission to Sections 1 and 3 of the Interstate Commerce Act and particularly to their application in transcontinental cases in the United States.

MR. SINCLAIR: What sub-section?

MR. FRAWLEY: I refer particularly to the decision in Transcontinental Cases of 1922, 74 I.C.C. 48, and fully discussed by Professor Locklin at pages 11805-08 of his evidence here.

At this point I just want to stop and make one further short interpolation and call to this Commission's

attention to a case which is not in my reply but which I will put into the record now so that it may be available for further consideration. It is the case of Planters Gin and Compress Company vs. Y. & M. V. Railroad Company in 1909 reported in 16 I.C.C. 131 at page 133, where the Commission stated:-

> "It is well established that water competition at a given point may render the circumstances substantially dissimilar and justify a discrimination against points where such competition is not controlling. It is to be observed, however, that such dissimilarity of circumstances does not relieve the carrier altogether from the restraint of the third section."

The third section of the Act is the one which contains the prohibition against undue preference. That case was decided in 1909, and it was referred to with approval in 1913 I will give the Commission that citation -- Texarkana Freight Bureau vs. St. Louis Iron Mountain Railway, 28 I.C.C. 569 at 581. Then I would like to refer to a case of Columbian Paper Company vs. Norfolk and Western Railway in 1938 reported in 225 I.C.C. page 630, and the citation is at page 630. What I am citing is merely a reference in that case to a case in the Supreme Court of the United States. I will read what the Commission said, the majority report of the Commission:-

> "In Skinner and Eddy Incorporation vs. United States, 249 U.S. 557 at 565, the Supreme Court stated that low rates, because voluntarily established by the carrier, may be accepted by the Commission as evidence

that other rates, actual or proposed, for comparable service are unreasonably high.'

Now, I simply call that to the Commission's attention with the respectful suggestion that it may repay study. A question may arise (I want to be quite frank about it) a question may arise as to the meaning of that word "voluntarily" I read it (and I hope not too legalistically) - -

THE CHAIRMAN: What is its context again?

MR. FRAWLEY: "In Skinner and Eddy Corporation vs. United States, the Supreme Court stated that low rates, because voluntarily established by the carrier, may be accepted by the Commission as evidence that other rates, actual or proposed, for comparable service are unreasonably high."

Now, as I was about to say, my lord, I hope it is not looking at it too legalistically to say that any rate which is not established by force of the compulsion of law, statute or regulation - -

THE CHAIRMAN: I know what you mean.

MR. FRAWLEY: Can be established voluntarily.

THE CHAIRMAN: Was that a long-and-short-haul case?

MR. FRAWLEY: Skinner and Eddy, yes, my lord, it was. The question of long-and-short-haul came in there, yes, because in the dissenting report - -

THE CHAIRMAN: Always, you see, and from the very beginning according to your concession or admission, the answer could be to such a case that the short and lower rate is a competitive one.

MR. FRAWLEY: Oh, yes, that is always the case, and at the moment it is the only rate and I want to make it clear, (as I have made it clear many times) that all I am asking for is a new set of rules to eliminate this negative situation which we have had to put up with all through the years and to make the railways go and prove something to the Board and not simply assume the competition, have the rubber stamp from the Board, and the rate goes in and you wait for the complaint. That is the situation today. I say that is doing a grave injustice to the people of Alberta and should be removed by amendment of the Statute.

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At page 23680 Mr. Sinclair said:-

"At this point I might say that increases in the normal rates and the removal of the Mountain Differential has resulted in a combination of the Vancouver rate plus the rate back to Alberta points making lower charges than the single factor rate to Alberta points, but this is applicable only in a few cases."

One might get the impression from this statement and also one at page 23682 that it is only since the increases and removal of the Mountain Differential that the Vancouver combination has been applicable. This is erroneous. For years in Alberta we have had to contend with rates to Vancouver which are so low that even the l.c.l. combination to Alberta can be applied. See Transcript p. 11770.

THE CHAIRMAN: You say there that you have to contend with rates to Vancouver.

MR. FRAWLEY: Yes, we have to contend with our distributing areas being invaded even on an l.c.l. basis.

THE CHAIRMAN: Are they distributing areas in Alberta?

MR. FRAWLEY: Yes, my lord.

THE CHAIRMAN: Are they being invaded today?

MR. FRAWLEY: I am going to give you two instances.

THE CHAIRMAN: I ask you the question because I think we were told the invasion had been checked. Perhaps that was wrong.

MR. FRAWLEY: I am going to show what these rates do. There are two rates I want to discuss with you,

not in much detail, but I am going to make some reference to them in a moment.

III. At p. 23700 Mr. Sinclair refers to my argument where I gave the Commission references to two recent American cases which contradicted Mr. Jefferson's suggestion that Sec. 500 of the Transportation Act was responsible for the present lack of fourth section relief on transcontinental hauls. Mr. Sinclair quoted a 1926 case - Reduced Rates on Commodities from Originating Territory West of Indiana State Line to Pacific Coast Terminals and drew the conclusion that this quotation supported Mr. Jefferson's statement. I submit that Mr. Sinclair's conclusion is absurd. The Commission refused relief because -

> "It is evident, therefore, that the diversion of any substantial tonnage from the water lines would have but an inappreciable effect on the net revenues of the rail carriers."
>
> (Transcript p. 23701).

Under those circumstances the condition requiring the railway to show an increase in net revenue obviously could not be satisfied. That was the basis of the Commission's finding -- not any question arising under Section 500 of the Transportation Act.

I recall to your lordship and the Commission that one of the requirements in my proposed section and in the American section is that the question of collateral losses must be nagative before relief from the fourth section will be granted.

THE CHAIRMAN: Just a moment, I was reading that quotation. It means, doesn't it, that even if the railways by the case in question and by a lower rate

acquire a substantial tonnage, which otherwise would go by water, that the net effect on their revenue would be inappreciable.

MR. FRAWLEY: Yes, my submission is that that is it.

THE CHAIRMAN: You say that would apply to the Canadian Pacific in this case too on any tonnage that they secure by their present preferential rate or competitive rates from steamships, that that is inappreciable?

MR. FRAWLEY: Yes, my lord ,well, I am simply meeting Mr. Sinclair's argument that certainly the case he used to answer my argument was quite unfounded.

Canadian Pacific has done its utmost to show that there is something unique about the American experience and that consequently the lessons there learned cannot be applied to Canada. I say they have completely failed in their endeavour and that the American situation stands as an instructive and useful demonstration of sound principle which can be applied to the Canadian problem.

IV. There is just one further point raised by Mr. Sinclair's argument. At page 23708 he said:

> "Mr.Frawley, volume 122, page 21984, stated that information given by Mr.Jefferson with respect to publishing rates to meet market competition between the Canadian railways is incorrect, and he refers to tolls on salt from Lindbergh, Alberta, to Saskatchewan points and Canadian Pacific tolls on coal from Southern Alberta to Pacific Coast as examples of long and short haul departures due to market competition between Canadian railways."

Mr.Sinclair then went on to say that Mr.Jefferson's statement was quite correct. In fact, he went much further than Mr.Jefferson. At page 23704:

"Rates are published to meet market competition only if the competition arises in a foreign country."

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(Page 24503 follows)

Mr. Sinclair referred to market competitive coal into the Vancouver market (page 23709).

MR. SINCLAIR: I did not.

MR. FRAWLEY: Does Mr. Sinclair regard Vancouver Island as a foreign country.

MR. SINCLAIR: No.

MR. FRAWLEY. Of course, that was rhetoric on Mr. Sinclair's part, just rhetoric; as far as I am concerned, the people of Alberta would be interested in less rhetoric from Mr. Sinclair and more common or garden variety language on freight from Mr. Jefferson.

The statement attributed to Mr. Jefferson by Mr. Sinclair at page 23708 to the effect that Canadian railways do not publish market competitive rates because of other Canadian railway competition is also incorrect. Its incorrectness plainly appears from Mr. Jefferson's evidence at page 16171 where he explained the reason for reducing Southern Alberta's coal rates to Vancouver.

"A. The reason for that decrease in the rates on coal from Alberta and Eastern British Columbia to the Coast was to place the rates on a reasonable relationship with the rates from points on the Canadian National Railways to the Pacific Coast.

"Q. And hadn't they been in relationship before?

"A. No, sir.

"Q. What was your rate prior to that time, do you know?

"A. My recollection is that from Drumheller it was around 25 cents per hundred weight, that would be $5.00 a ton."

"Q. And what was the rate from the closest Canadian National similar point?

Now this is the answer:

"A. I do not recall, but I know it was much lower, but the reduction had nothing to do with the increase; it was merely made to place the mines on the Canadian Pacific Railway in a position to reach the Vancouver market in competition with mines on the Canadian National Railways."

If long and short haul discrimination can be alleviated in the East -- and I have dealt with that -- I say it can also be alleviated in the West. Subsection 1 of our amendment will assure adequate control of the violating competitive rates and subsection 2 will assure just and reasonable rates to points intermediate to the competitive point.

With the American experience and the Eastern Canadian experience as illustrations of what can be done, it is absurd to talk about a breakdown of the rate structure or chaos.

Now, my lord, I said I was going to give you two examples and I want to do that now. I want to give you two examples of rates. I want to give you the rate on canned goods and the rate on steel plate as they will be on June 16, the 16th of this next month. The rate from Toronto to Calgary and Edmonton will be $27.77.

THE CHAIRMAN: Pardon me a moment, the rate from where?

MR. FRAWLEY: The rate from Toronto to Calgary, effective June 16. That has not been announced yet, but apparently the railways have agreed that they will come into effect on June 16. That means they are giving the fifteen days' notice today, probably. The rate on canned goods from Toronto to Calgary and Edmonton will be

$2.77. The rate from Toronto to Vancouver will be $1.40. No change. The rate from Vancouver to Calgary and Edmonton --

THE CHAIRMAN: Pardon me. That was one dollar and what?

MR. FRAWLEY: $1.40. That rate is not being increased. The rate from Vancouver, the back haul rate from Vancouver to Calgary and Edmonton will be, on June 16, $1.25. You add the Toronto to Vancouver and the Vancouver back haul, and you get $2.65. I do not think it is a time for modest language. You get the amazing situation that the back haul rate is 12 cents under the published rate to Calgary and Edmonton; or expressed percentagewise, the Calgary rate will be 197 per cent of the Vancouver rate; that back haul rate of $2.65 Mr. Jefferson told us, "that is the rate you will be charged, and only that rate you will be charged." So we have. That has been gone over so often that I need not repeat it now.

That is the concession which the railways say has been given -- it is not a concession because they say that is the law today. That is left entirely to the railways. It just seemed worth while noting in passing. That is left to the railway to give that rate. When I questioned Mr. Jefferson about that a long time ago, as I recall it now -- my friends can correct me if I am wrong -- he was not able to point to anything in the statute or anything in any Board order which required him to do it. He said he did it. He said he was forced to do it because the shippers could compel him to do it.

THE CHAIRMAN: It might be made statutory.

MR. FRAWLEY: Yes, it might be made statutory,

but I want to say very quickly --

THE CHAIRMAN: That would not satisfy you.

MR. FRAWLEY: Oh, it would really -- it would insult us if that were put into the statute, that we in Alberta had to stand to have our goods go to Vancouver and be hauled back to Calgary and saying you are satisfied. Let me come to steel plate; it is even worse. Steel plate from Toronto to Calgary as it will be on June 16 is $2.60.

THE CHAIRMAN: Pardon me a moment; steel plate, you say?

MR. FRAWLEY: Steel plate, Toronto to Calgary or Edmonton. I do not know why I am always saying Calgary. That is $2.60. Toronto to Vancouver, $1.10; no change. I put that in parenthesis. No increase in that rate. Then Vancouver to Calgary, the back haul rate, $1.04.

THE CHAIRMAN: Pardon me, Vancouver to Calgary, how much?

MR. FRAWLEY: $1.04. Might I be pardoned and allowed to just stop there and look at those two rates.

COMMISSIONER INNIS: Is that no change?

MR. FRAWLEY: Oh, no. That is an increase.

THE CHAIRMAN: That is Vancouver to Calgary?

MR. FRAWLEY: Yes, that is an increase. Let us look at those two rates. Toronto to Vancouver -- I do not know what the mileage is. It is commonly called three thousand miles, but I do not know whether it is that much or not. The rate is $1.10. From Vancouver to Calgary, even with the mountain differential eliminated, it is $1.04. You add the Toronto to Vancouver and the Vancouver to Calgary, the back haul, and you get $2.14, 46 cents of a differential there between the backhaul rate and the published rate to Calgary; or if you want it

percentagewise, because it is certainly impressive, the Calgary rate is 235% of the Vancouver rate.

Now, my lord, I just want to say a few words about --

THE CHAIRMAN: Before you pass on from that, can you give us the present rate from Toronto to Calgary, for instance?

MR. FRAWLEY: I am sorry, my lord, I cannot off-hand; it would be just four point some per cent less, because it is the rate that is going in; it was authorized just the other day.

I now call attention briefly and without referring again to the paragraph, to what the Chief Commissioner of the Board of Railway Commissioners said in 1927, when he said there was some complaint, but the complaints were not very impressive. Now, the Canadian Pacific Railway, somewhat parrot-like, picks up that expression and our case is not any more impressive to the Canadian Pacific today than it was to Chief Justice McKeown in 1927. Since 1927, with that feeble statute there, what has the Board of Transport Commissioners done about this long and short haul? Nothing. I want to call your attention to the rather peculiar language of this section. We have had it read many times, and I want to read it once more this morning. Subsection (5) of Section 314 reads as follows:

> "The Board shall not approve or allow any toll, which for the like description of goods, or for passengers carried under substantially similar circumstances and conditions in the same direction over the same line or route is greater for a shorter than for a longer distance, within which such shorter distance is included --"

And that is the rate to Calgary.

" -- unless the Board is satisfied that, owing to competition, it is expedient to allow such tolls."

That is the tolls of Calgary. I apply it to these particular tolls.

THE CHAIRMAN: Pardon me, that is section 314, you say?

MR. FRAWLEY: Section 314, subsection (5). I say that the Board today, through a negative policy, through an almost supine policy, are today satisfied, -- well, it is hard even to say they are satisfied because they do nothing. It is hard to say whether they are satisfied or not. They are now permitting, if you like, and are authorizing, as they did authorize last week, a rate of $2.60 to Calgary on steel plate and at the same time they are authorizing or rather permitting a rate of $1.10 to Vancouver. Let us forget about the rate of $1.10. I say that the Board today should not allow that rate of $2.60 to be maintained for steel plate to Canada or a rate of $2.77 on canned goods to Calgary. I say that under the section as it is, feeble as it is, that the Board cannot say that it is expedient to allow a rate of $2.77. Why is it expedient? It is expedient to allow a rate of $2.77 to Calgary, why? Owing to competition. Owing to competition it is expedient. They mean of course the competition to Vancouver. All right, let them allow a rate of $1.10 to Vancouver. The railways have put that in. Why is it expedient to allow $2.77 to Calgary? I say it is shocking. I say that rate should be disallowed. The high rate to Calgary should be disallowed. Let us look at the United States situation.

THE CHAIRMAN: And to all other intervening points as well?

MR. FRAWLEY: Of course. If you look at Regina, I do not know what it is, but you would find the rate to Regina would be -- it is $2.77 to Calgary; I think it might be $2.55 or $2.66. I am only guessing.

THE CHAIRMAN: From a revenue point of view, where would the railways go?

MR. FRAWLEY: To a general rate level. I want to make my position clear about that. The Province of Alberta are not asking for charity from the Canadian Pacific Railway. I have never said that the railways can do all this under their own steam. It is no part of my case to say that the railways must do this at their own expense. The amazing attitude that we have had here from the Canadian Pacific seems to come from that. They say, "Mr. Frawley is invading our revenue." I am doing no such thing. I want my injustices cured. Then if it costs something, get it out of the general rate level. We got the mountain differential removed because it was an injustice. It probably cost the railway something. I am sure it did cost them something. It is coming out of the general rate level. I am glad to have the opportunity to make that position clear, because I did not make it clear in my argument in chief. I want to make the position of Alberta clear. We are not asking for charity, and I will say something about that in my final word about subsidies. We can pay our way in Alberta. We have heard a lot about our great wealth, but that is all -- to use what is certainly an unparliamentary expression -- eyewash so far as this cCommission is concerned. It is nothing at all. It has nothing to do with the vicious freight rate structure. We want to pay our way in Alberta but we want our injustices removed. Then let

the Canadian Pacific Railway obtain whatever revenues they need; and I am not suggesting that they will lose any revenue. I say that putting in these lower rates to Calgary and Edmonton will build up Alberta's industry and in the end the benefits will be great and far-reaching.

Let me now come to what I was going to say about Salt Lake and Spokane. It was because Salt Lake and Spokane would not stand for that sort of thing that I have just now called the Commission's attention to that they are in the position they are in today. They would not stand for it, not yesterday or today, but years ago. Two generations ago they said, "Enough of that," and so Congress in the United States and the Interstate Commerce Commission changed that. But with the negative Board of Railway Commissioners and the short-sighted railways and the feeble legislation, it has continued until 1950, until this Royal Commission has been asked to sit on the question. I say they got redress, and will anyone in Utah, Idaho or Montana have any doubt about the good effect of removing that discrimination in that country?

THE CHAIRMAN: Would the equalization you have in mind make the rate from Toronto to Calgary lower than the rate from Toronto to Vancouver?

MR. FRAWLEY: Not necessarily, no. That is another fear that was expressed and it is an argument in terrorem.

THE CHAIRMAN: How would you make the exception? How would you justify an exception?

MR. FRAWLEY: I do not quite understand. It would not be lower.

THE CHAIRMAN: I asked you whether the equalization that you have in mind, the new structure you have in mind, would make the rate from Toronto to Calgary lower

than the rate from Toronto to Vancouver. What would you do about Toronto to Vancouver?

MR. FRAWLEY: Do whatever the competition and whatever the Board would permit after a case had been made out under my new scheme; put in whatever rate is there. But then, before the case is completed, the Board should look at the rate to intermediate points and say, "Is that rate just and reasonable compared to the rate which we have just permitted either to Vancouver --"

THE CHAIRMAN: What would be your measure unless it was equality? They would have to say the rate to Calgary must be lower.

MR. FRAWLEY: No, I think it is a matter of degree.

THE CHAIRMAN: That may be.

MR. FRAWLEY: It is a matter of degree. They may say, "Well, 197% shocks the conscience, but 102% does not."

THE CHAIRMAN: It has not shocked their conscience so far.

MR. FRAWLEY: No, because they have not any conscience, perhaps I should say you cannot shock what is not there.

THE CHAIRMAN: What is to prevent them from doing exactly what they are doing here?

MR. FRAWLEY: Under my scheme?

THE CHAIRMAN: Yes.

MR. FRAWLEY: I would take a chance on that.

THE CHAIRMAN: You would take a chance on that?

MR. FRAWLEY: Yes, I would take a chance on that. Give me a new set of rules, and I will play the game and be satisfied with the consequences.

(Page 24513 follows)

THE CHAIRMAN: You do not want anything more specific than that?

MR. FRAWLEY: If I get this new section written into the Railway Act I and the people I represent will be quite satisfied to see how things run along under the new rules. As it is now it is impossible; it is a straitjacket. If you give us new sets of rules, just as they have given the Americans, then we will have some chaos but no more than they have in the United States.

THE CHAIRMAN: Is this the United States language that is in your amendment?

MR. FRAWLEY: Not in section 2, my lord.

THE CHAIRMAN: I did not think so because I think they must have done something more explicit in the United States than that.

MR. FRAWLEY: All they said was -- perhaps it is less explicit.

THE CHAIRMAN: You are sending it right back to the Board and asking the Board whether it is just and reasonable to grant $1.10 to Vancouver when they are imposing $2 on Calgary.

MR. FRAWLEY: I turn it around, my lord. Is it just and reasonable to award us $2.77 --

THE CHAIRMAN: I apprehend that you have the same answer today, it is justified by competition.

MR. FRAWLEY: They would have to prove these other things, and if they did that and there were good reasons for it --

THE CHAIRMAN: There are good reasons but under these terms whether the reasons are good or bad --

MR. FRAWLEY: As I said when I was arguing in chief this figure of 235% shocks the conscience.

THE CHAIRMAN: Perhaps it does. I amnot saying it

does not. If you want to know I am impressed myself. However, that does not settle the legal consequences of your amendment.

MR. FRAWLEY: All I say is --

THE CHAIRMAN: You still have to go to the Board and shock their conscience.

MR. FRAWLEY: Perhaps I can explain it by taking another example. Suppose it was $2.77 and $1.40. Suppose it was $1.70 and $1.40. The Board would say, "We think that is a reasonable rate."

THE CHAIRMAN: Why is it reasonable to carry 620 miles farther for less?

MR. FRAWLEY: If the railway made out a case that there was competition and that there was no dangerof collateral losses --

THE CHAIRMAN: As soon as they make out a case they must say what sort of rate they will have to charge to meet the competition.

MR. FRAWLEY: Of course, my lord, when I say that $1.40 to Vancouver and $1.70 to Calgary would look reasonable I am not committing myself to that because I agree with your lordship that at first blush there should be equality as in the United States. There should be no violation as there is today.

THE CHAIRMAN: Will you not agree with me as to what I said?

MR. FRAWLEY: I am struck with your lordship's suggestion. That is all I mean, my lord.

THE CHAIRMAN: I really do not see that. I understand your purpose and I understand what you have in view. Nevertheless it seems to me this amendment simply leaves it all over again to the Board to say just as they are doing today.

MR. FRAWLEY: Let us look at the alternative.

THE CHAIRMAN: You have the same figures and you have the same consciences to appeal to.

MR. FRAWLEY: Let us look at the alternative. If I came in with an amendment and asked for rigid prohibition, and in so many words said it shall never be proper to charge more for a longer distance than for a shorter distance and stopped there I think that would be too rigid. I think that there is some -- credit is not the right word, but I think it indicates that we want to be reasonable when we simply turn to the American experience.

THE CHAIRMAN: Let me ask you this because it has important practical consequences. Suppose as a result of what you want to have done that the railways had to give up the traffic to Vancouver to the steamships. Then what?

MR. FRAWLEY: If they had to give it up --

THE CHAIRMAN: I mean they had to put in rates so high that they would lose the traffic. Suppose that happened. Then what would you do?

MR. FRAWLEY: I say you cannot justify an injustice against one section of the country.

THE CHAIRMAN: What would be the position of Calgary and Edmonton?

MR. FRAWLEY: My lord, if it meant such a decline in revenues that they had to seek further general percentage increases that might have to be the consequence.

THE CHAIRMAN: I am asking you about competition with Calgary and Edmonton being transferred to the ships bringing the goods into Vancouver at a very low rate, as Mr. Brazier showed us the other day. You are talking of invasion of territory.

MR. FRAWLEY: Yes.

THE CHAIRMAN: Would you be any better off?

MR. FRAWLEY: If all the goods came in by ship and our territory was invaded by them we are not, no. We are not invaded by a statute. We are not invaded by an unjust statute like we are now.

THE CHAIRMAN: You mean you would welcome these invaders?

MR. FRAWLEY: We would not welcome them. However, we would have to put up with them. We will fight our way in Alberta. We always have, but we do not want straitjacket legislation and short-sighted indifferent railways.

THE CHAIRMAN: I am trying to find out what the practical position would be. Suppose that some territory which you say ought to be yours is invaded by distributors from Vancouver who get low sea rates instead of the low railway rates they are getting today. Would you be any better off?

MR. FRAWLEY: Those distributors would be no better off, and there is nothing they could do about it. The goods would come into Vancouver harbour and be distributed right through Edmonton and Calgary, and for all I know it might make a complete bouleversement in the economy of Alberta.

THE CHAIRMAN: You do not mind that?

MR. FRAWLEY: I could not do anything about it. These ships come across the sea.

THE CHAIRMAN: In that case the railways would be minus so much revenue and they would have to find it elsewhere.

MR. FRAWLEY: Yes, and it comes back to what I said before. They can take it out of general increases in the rate level. I have one concluding word on the question of subsidy, and I have a particular purpose in

dealing with that.

ALBERTA'S POSITION REGARDING SUBSIDY

At page 23236, Volume 130, Mr. Evans said:

"Alberta did not ask for subsidies in its Brief or through its witnesses, but Mr. Frawley, in his argument at p. 21826 has joined the ranks of the subsidy seekers."

THE CHAIRMAN: Who has?

MR. FRAWEEY: Mr. Frawley has joined theranks of the subsidy seekers, says Mr. Evans.

I have not only the right but the duty to make the position of my clients clear.

Alberta has not asked for a subsidy on the existing level of rates.

Likewise, Alberta does not seek to avoid paying its share of even higher rates, provided that other parts of Canada are bearing their fair share, and also provided that the injustices which bear upon Alberta have been removed from the rate structure. But if competitive rates are not able to bear additional increases pari passu with non-competitive rates, then these objectionable consequences will follows

(1) In effect, Central Canada will largely escape any burden of increases, a result which will enhance both the financial and economic advantages of that part of the country.

(2) It would be a clear indication that rail costs were being pushed upwards out of line with other costs in the country - and Alberta is not willing to support an abnormally high rate of railway costs within Alberta - much less within Central Canada.

I can now add to the foregoing by advising the Commission of what is pretty well general knowledge thanks to Mr. Evans' statement, that none of the increase ordered by the Transport Board by its Order No. 74512 dated 25th May 1950 will be put upon the competitive rates -- not one iota of it. This bears out completely the position which I have taken in connection with the crisis which has now actually arrived in Canada's transportation problem.

I now want to call attention to something that is just around the corner. Your lordship will know from the public press that a report has been submitted to the Minister of Labour in connection with the wage award, and your lordship and the Commissioners will also know that the railways have announced publicly that they are willing to implement the minority report, and that the minority report will call for an expenditure of about $19,224,560 for both railways.

THE CHAIRMAN: You say the minority report?

MR. FRAWLEY: The majority report, I am very sorry. I have had a few calculations made, and this is how it works out. The increase granted last week by the Board from 16% to 20%, which was equivalent to an increase of 3.6%, involved revenues of $6,593,583 for the Canadian Pacific. That can be taken from Assistant Chief Commissioner Wardrope's judgment. The new wage demands are as follows. The union demand, which is in the minority report as I understand it, amounts to $84,147,000 for both railways. The recommendation of the conciliation board is $19,224,560. The railways have accepted the plan of the conciliation board, and therefore the railways are committed to increases of at least $19,234,560 of which the share of the Canadian Pacific would

approximate $9 million. For my purpose that is close enough. On the basis that $6,593,583 involved an increase of 3.6% in rates, $9 million would requirean additional increase of approximately 5%. I only bring that to the attention of the Commission to indicate the seriousness of this matter. I think it is not too extravagant language to say that the freight rate structure is breaking down right before our eyes. If the majority report is accepted and that is transmitted into a 5% increase I say to the Commission that amount will not be put on competitive rates. I say now that the railways have reached the end of their tether, unfortunately for them. I am not one of those who blames them at all.

There is the St. Lawrence wateray in Eastern Canada, the very effective highway system in Central Canada, the very efficient service which these truckers are giving the people, and these things have brought about a situation - which the railways cannot combat. I say that there would be an additional 5% increase, and therefore it is just a matter of degree. We have today 3.6%, not one cent of which is put on competitive rates, and in thirty, sixty or ninety days if the railways' own commitment is translated into a rate increase there will be another 5%, and that again will be put on the long haul traffic.

I only point these things out to impress upon the Commission something that needs no words from me, and with which you yourselves are very seriously impressed, the inequality in the freight rate structure which I am sure will receive the most careful attention in your report. I have concluded my reply, and once again may I say on behalf of the people of Alberta that we appreciate very much the hearing we have had and we look forward with high

hopes to your recommendations.

COMMISSIONER INNIS: Would you favour a subsidy on the 5%?

MR. FRAWLEY: What is that?

COMMISSIONER INNIS: If rates go up 5% would you favour a subsidy to take care of that?

MR. FRAWLEY: When I say "subsidy" I do not want to quibble about the word -- yes, whenever a rate cannot be put parri passu on long and short haul, whenever that situation arises it seems to me to be almost demonstrated without any further words of mine, that such a thing cannot go on and the parliamentof Canada must come to the succourof the railways. I am not asking for a subsidy. It is the railways that should be forced to go to the government.

THE CHAIRMAN: Do you think with all these subsidies that any enterprise could remain a private enterprise very long?

MR. FRAWLEY: That may be. That is why I say the freight rate structure is breaking down before our eyes. It is a serious matter.

THE CHAIRMAN: Did you not tell us at the beginning that you wished the Canadian Pacific to be maintained as a private enterprise?

MR. FRAWLEY: Yes, and it is the opinion of the people of Alberta --

THE CHAIRMAN: You said yes before.

MR. FRAWLEY: That is true. However, I think it is not shifting my position to say, "How long can we go on." I say that if the Canadian Pacific is to go on and on and on placing these increases on our traffic and not on central Canadian traffic the people of Canada will not stand for it. Something has got to be done.

THE CHAIRMAN: You ask them to provide subsidies.

MR. FRAWLEY: These words will find little echo with the railways. They will not like these words at all but I say that the railways must apply to the governor general in council and they must say, "We cannot in conscience put all these increases on the non-competitive traffic. You must help us out."

(Page 24523 follows)

ARGUMENT IN REPLY BY MR F.D.SMITH, K.C.

THE CHAIRMAN: You are appearing now both for Nova Scotia and---

MR SMITH: Just for the Province of Nova Scotia.

THE CHAIRMAN: Just for the Province of Nova Scotia?

MR SMITH: Yes. It is limited to provincial reply, as I understand it.

May it please your lordship and gentlemen of the Commission:

I do not intend to be too long, I hope. I intend to deal with only three or four, perhaps four, subjects, and I shall confine myself to a very short discussion of these topics.

The first matter to which I should like to refer is a matter which I have dealt with at some length in my argument, namely, the question of Horizontal Percentage Increases.

HORIZONTAL PERCENTAGE INCREASES

Mr. Evans, in his argument at Vol. 130, p. 23280, contended that the subject of horizontal increases is one on which the Commission should make no recommendation as it is obviously one for consideration and decision by the Board in the exercise of its jurisdiction. He also submitted that even in the United States the Interstate Commerce Commission does not uniformly apply exceptions to horizontal increases.

At Vol. 130, p. 23292, Mr. Evans endeavoured to draw a fine distinction between rate differences and competitive rate relationships. He supported his argument by reference to the Judgment in the 21% Case, as well as to some statements contained in the Forty Percent Case (Ex

Parte 74) before the Interstate Commerce Commission in 1920, reported in 58 I.C.C. 220. His submission was that if there is one man who has a longer haul than a second man, the difference between their rates at a given time is not a rate relationship, but will become a rate relationship by usage or by custom or by finding. It is obvious that what Mr. Evans has in mind is a relationship which has been fixed either by the regulatory board or by the railway and apparently in his submission, it is only such a fixed relation which can be properly called a rate relation. In my submission, this distinction is not supported by the recent cases in the Interstate Commerce Commission.

As many years ago as the Fifteen Percent Case, 1931 (Ex Parte 103) 178 I.C.C. 539, the Interstate Commerce Commission refused an application of the American Railways for a 15% horizontal increase and substituted therefor a plan of increases limited to specific amounts. At p. 578, it is said that -

> "The plan was designed to avoid imposing burdens on industry which could not reasonably be borne; . . . and to disturb business conditions as little as possible by preserving very generally existing rate relations."

Mr. Evans quoted rather copiously from earlier judgments but refrained from quoting from the more recent judgments of the Interstate Commerce Commission in Ex Parte 162, 264 I.C.C. 696; 266 I.C.C. 537; and in Ex Parte 166, 270 I.C.C. 403.

I have referred in my argument to the very substantial exceptions to the uniform percentage increase plan which were adopted in Ex Parte 162 and I do not intend to repeat my argument here.

I might mention in passing that at p. 575 of 266 I.C.C., it is said in relation to the specific commodities under discussion that "a flat increase is preferred by most of the rail shippers to preserve pre-existing relations or fixed differentials." I have underlined the last phrase. Again, at p. 576, it is stated that certain water carriers transporting another commodity propose an increase of 25% without limitation, but would make the same increase as the rail carriers so as to preserve existing differentials.

These passages illustrate, I submit, that the word "relations" as used in the judgments of the Interstate Commerce Commission is applicable both to relations or differences which are fixed and those which are not fixed.

The same general plan of many exceptions to a uniform percentage increase adopted in Ex Parte 162 was followed in Ex Parte 166.

The increases authorized in these cases constitute a very substantial part of the increases which have been made in the United States since the War. The earlier increases and the later increase in Ex Parte 168 were on a much lower scale. As all the increases were cumulative, the situation is that there is a very substantial portion of traffic moving in the United States under exceptions to uniform standard percentage increases.

In Ex Parte 166, 270 I.C.C. 403, at p. 453, the Commission referred to both competitive situations where no recognized differential of rates had been established, as well as to situations in which fixed relations had been established, and to the fact that the application of a percentage increase to both long and short haul competing shippers resulted in widening the difference between the rates, often to such an extent as to exclude the long-haul shipper from the common market or compel him to reduce his

prices so that he had no profit. It is stated that in the proceeding, the petitioners in formulating their proposals decided upon a combination of percentage increases, adjusted to regional needs, with certain maximum limits to preserve traffic and lessen the unfavourable effect upon existing commercial relations and in some cases stated flat amounts of increases.

It was recognized that there were situations where the allowance of any increase of substantial size must disturb pre-existing relations beyond the possibility of remedial correction so as to maintain the former competitive status, and it was mentioned that the Commission had the assurance of their petitioners to proceed by voluntary cooperation and discussion with the shippers and representatives of markets to advise and endeavour to put into effect such measures as would restore former competitive relations as completely as possible.

In the last case of Ex Parte 168, 276 I.C.C. 9, which was for a lower percentage increase, with certain exceptions, which the Commission did not grant in whole, but reduced the percentages from 13 per cent to 8 to 10 per cent, the Commission stated, at p. 48:

> "In a series of authorizations for increases in rates, important exceptions have been made, from the general increases, either by lesser amounts of authorizations, or by imposing maxima, in favor of certain of the major agricultural products. In addition, the railroads themselves have seen the need for other adjustments, principally by way of reductions, applicable to important agricultural products. The effects have been cumulated, and are reflected in the present general rate structure on the products of agriculture.

.....

. . . Transportation for these long distances makes freight charges bulk overlarge in their economy; and increased differentials or rate differences affect the competition with producers nearer the markets. Increases automatically increase the transportation tax burden.

As previously indicated, authorizations for general increases in rates during the past decade generally provided for lesser increases on these products than those approved on the general body of traffic."

Reference was made at pp. 111 and 112 to the protests made against various rate adjustments and the passages to which I have referred in Ex Parte 166 were stated to be particularly apposite.

And then, at p. 112, it was pointed out that as the competing carriers had the burden of initiating and maintaining rates that comply with the Act, the burden was on them in a spirit of cooperation to advise and suggest for the consideration of the shipping public the rates which in their judgment would correct maladjustments.

In view of the passages from the judgments of the Interstate Commerce Commission, to which I have referred, I submit that Mr. Evans' distinction between rate differences and rate relationships is of no validity and that the American experience with exceptions to the uniform horizontal increase plan is not based on a distinction of this kind. One has only to refer to the exceptions in Ex Parte 162 and Ex Parte 168 and to the discussions in the judgments to realize that the exceptions have applied to all movements of the commodities in question.

The exceptions are not limited to fixed specific rate relationships, however that term may be defined, but

are based on general economic and traffic conditions affecting the commodities.

It is only necessary to refer to Mr. Evans' submission that the Board is only concerned with rate relationships so designated by it to appreciate the difference of approach of the Board, as compared with that of the Interstate Commerce Commission.

In my submission, the Interstate Commerce Commission does not proceed in the matter of rate increases by conferring a kind of privilege upon certain rate differences by calling them rate relationships, nor does it base its finding on the specific movement so termed.

At Vol. 130, pp. 23301-23302, Mr. Evans contended that the position in the United States was entirely different from Canada and that his Provincial friends had completely misconceived the reason for the exceptions being made.

Mr. Evans' contention was that it was in the interest of the American railways to have exceptions, while on the other hand, it is not in the Canadian railways' interests to set maxima on horizontal percentage increases.

In the United States, it would appear that the force of competition between carriers protects the more distant producer. The same force is lacking in Canada and hence the need for positive action in Canada to secure similar protection for the long haul producer is readily apparent. Mr. Evans, in his argument, has made clear the justification for such action and I suggest that we cannot accept the implication in his argument that if exceptions are not in the interest of Canadian railways, no legitimate grievance on the part of shippers can possibly exist.

I do not propose to discuss Mr. Evans' submissions at pp. 23293 and 23294 with respect to the effect of

inflation on the question of horizontal increases. I am concerned with the practical effect of such increases.

In my submission, it is indisputable that the more distant producer suffers a greater absolute increase in freight costs by such a method, no matter what increase there has been in the general price level. His position relatively is also very seriously affected.

That is all I have to say on the question of Horizontal Increases, and I now proceed to discuss for a few minutes the question of Rate Base and Rate of Return.

(Recess)

(Page 24532 follows)

RATE BASE AND RATE OF RETURN

I do not propose to discuss at length the submissions made by my friend, Mr. Sinclair, with respect to the above subjects. My argument on these questions is found in Vol. 125, pp. 22505 to 22557 and Vol. 126, pp. 22558 to 22564.

There are, however, several matters to which Mr. Sinclair referred which, in my submission, either require correction or invite comment.

In Vol. 135, p. 23504, the Chairman, referring to the 8% Judgment of September 20, 1949, asked if the Board discarded the whole question of rate base and proceeded on a different basis, and Mr. Sinclair answered that they went on a requirements basis, in spite of certain statutory provisions of the Railway Act, which conferred upon them the right, if they were not satisfied with the evidence that was adduced, to put their own experts on the case and to make such investigations as they felt were warranted.

It is only fair to the Board to point out that the application of the Railway was made specifically on a requirements basis and not on the basis of a rate of return on a rate base. It was only during the hearing of the application that evidence was adduced by the Railway Company for the purpose of endeavoring to establish a rate base and rate of return which was to serve as a test of the requirements basis. As pointed out on p. 14 of the pamphlet copy of the Judgment of Setpember 20, 1949, the applicants did not, when the objection was made by the Provinces, apply to amend their application so that there would be before the Board as an alternative to the dollar requirements of the Canadian Pacific Railway a full discussion of a fair rate of return on a rate base. The Board, however, in view of

the importance attached to the evidence and argument respecting rate base by the Counsel of the applicants, thought it proper to make brief comment. The Board did accept the arguments of the Provinces that much more evidence than was adduced would be necessary to justify the Board in deciding, from Exhibit 49-49 and the evidence in its support, that a rate base had been established for the purposes of dealing with the application. In my submkssion, the Board correctly decided that question.

I submit that it is beyond question that mere book investment is not a proper rate base. In certain cases, it may be a starting point, but cannot be any more. It is only necessary to mention the cases cited by my friend, Mr. MacPherson, to demonstrate the accuracy of my submission.

I mention , however, one matter in passing which was discussed by Mr. Sinclair, namely Mr. MacPherson's argument with respect to donations and grants. I submit it is only fair and equitable that donated property should be excluded from the rate base. Obviously such property was not given for the purpose of enabling the company to exact higher charges; the intent was rather to enable the company to keep its investment at a minimum and so to enjoy a reasonable return on its investment with smaller earnings. Clearly, in establishing the rate base, franchises and analagous rights in public property are excluded from consideration. See Willcox v. Consolidated Gas Co. (1909) 212 U.S. 19 at pp. 44-48; Georgia Railway & Power Co. v. Commission (1923) 262 U.S. 265 at p. 632. The other cases cited by Mr. MacPherson are to the same effect.

There is implicit in the argument of my friend Mr. Sinclair, the assertion that the words "original cost"

and "book investment" are synonymous. I suggest that such an assertion is wholly erroneous.

One would infer from Mr. Sinclair's argument that he was suggesting that the Provinces had contended in the 8% Case that reproduction cost, rather than original cost, should determine the rate base. No such argument, however, was advanced by the Provinces.

The text of the amendment proposed by the Canadian Pacific is - -

> "Rates shall not be deemed to be just and reasonable unless, taken as a whole, they are sufficient to provide a fair return upon the investment in the railway property of Canadian Pacific Railway Company and the Board may from time to time determine the investment in railway property upon which the return is to be calculated and the rate of such return."
>
> --Vol. 131, pp. 23494-23495

In my argument in Vol. 126, pp. 22559-22564, I endeavored to summarize my objections to the amendment proposed by Canadian Pacific. It is in the circumstances, therefore, unnecessary for me to repeat them, particularly as, in the main, Mr. Sinclair has not, in my respectful submission, effectively answered any of them.

Briefly, I contended -

That the authority of the Board to fix, determine and enforce just and reasonable rates should not be fettered by the proposed amendment, for the reasons which I stated.

It was my submission, among others, that Parliament should not bind the rate making body to the

service of any single formula as it had been decided -- and I say rightly decided -- that it was not the method employed but the result which is important.

I pointed out that while I was opposed to the enactment in the form proposed or any amendment requiring the Board to fix rates upon the basis of a fair return on the railway property of the Canadian Pacific Railway, the proposed amendment contained no provision for the deduction of accrued depreciation from investment, nor any reference to property used or useful or to prudent investment.

My friend, Mr. Sinclair, at Vol. 131, pp. 23545-23546, said:-

> Now, you will remember Mr. Smith during his argument, in Vol. 125, at p. 22554, said, 'Why, there is nothing in this amendment to provide for deduction of depreciation, there is nothing in this amendment to provide for prudency of investment,' and he said if your Commission is going to recommend the adoption of such an amendment both of these things should be taken care of. Now, your lordship pointed out to him that it was practically axiomatic, and he agreed with you, but in spite of that he felt that it should be in the Act. I say that it is not necessary and that we should keep these sections of the Railway Act as general as we can, so that the Board will not be circumscribed by unnecessary language that is bound to cause difficulty and argument and much delay in having these very important matters decided. Certainly the Board will deduct

depreciation from the rate base, and the provinces are indeed fortunate in having the Canadian Pacific as a rate base that would have accruals to the extent that we have."

Perhaps, therefore, in the circumstances, it might be advisable, as the late Governor Al Smith used to say, "to look at the record."

Mr. Sinclair has referred to the case of Ottawa v. Ottawa Electric Railway Company (1946) 59 C.R.T.C. 136. In that case, there was an agreement between the City and the Company, confirmed by Federal Act, 1924, Chap. 84, which appears as a schedule to the Act, under which provision was made (now that was under an agreement) for the fixing of tolls by the Board of Transport Commissioners. One of the items to be provided for out of revenue under the agreement was "a just and reasonable return to the Company on the capital investment." This provision is quite similar, as you will observe, to the proposed amendment of the Canadian Pacific Railway Company. Its construction, however, gave rise from time to time to very substantial differences of opinion among the members of the Board.

The provision fell to be construed first in 1928, 34 C.R.C. 316. The Board held that in determining the capital investment on which the return was to be allowed, the depreciation reserve of the Company had no bearing. In other words capital investment meant gross investment.

The agreement again came before the Board in 1933, reported in 41 C.R.C. 86. The Board, in that case, refused to follow its earlier judgment and decided that from the capital investment, there should be subtracted so much of the depreciation reserve as had not been used for

renewals or replacements.

THE CHAIRMAN: Pardon me, what Board have you been referring to?

MR. SMITH: The Transport Board.

THE CHAIRMAN: Well, you say they refused to follow their previsous decision.

MR. SMITH: Yes, my lord.

THE CHAIRMAN: I thought that was a thing they didn't do.

MR. SMITH: Apparently they did in this case, my lord. Now, that is the second occasion. The third occasion was when it came before the Board in the citation which I first gave you, in 1946. The Company's position in that case was that the rate base should be the actual cost new of the property still used and in useful service, without any deduction for depreciation, with the working capital added. It was held by the Board on this occasion that deducting the depreciation reserve or the amount of the actual depreciation gets the value of the property at a particular time, not the capital investment, and it was pointed out that nothing was said in the agreement about value, fair value or replacement value, such as is frequently discussed in ordinary rate case decisions. In the result, the Board refused to follow its 1933 decision. So we have three decisions when they go back on their first decision.

THE CHAIRMAN: Have you at hand there the language the Board used when they refused to follow their previous decision?

MR. SMITH: I haven't got the book here but we could get it.

The reference in Mr. Sinclair's argument, Vol. 131, p. 23537, as to your lordship pointing out to me that

it was practically axiomatic that such matters as deductions for depreciation and prudency of investment would be taken into consideration by the Board in determining the investment under the proposed amendment also requires correction.

In my argument at p. 22554, I pointed out that in the determination of a rate base, these matters should be taken into consideration and your lordship asked me if they were axiomatic, would they not be urged in that form before the Board.

I answered that I did not think they could be because the words "investment in the railway property?" contained in the amendment did not leave room for the deduction from that investment of depreciation, nor for the application of the prudent investment theory. I submit that the contradictory decisions of the Board in the Ottawa Electric case, to which I have referred, completely support my contentions in this regard.

THE CHAIRMAN: But did the contract specify, as this amendment does, that it was the duty of the Board to determine the investment from time to time?

MR. SMITH: Yes, my lord. One of the items in the agreement to be provided for out of revenue was a just and reasonable return to the company on the capital investment.

THE CHAIRMAN: Yes, but did it say that the Board, that it should be the duty of the Board from time to time to determine?

MR. SMITH: Yes, my lord.

MR. SINCLAIR: No.

MR. SMITH: I will get the provision there. Now, there are several other minor matters to which I wish to refer and in which Mr. Sinclair, unwittingly

perhaps, fell into error.

In Vol. 131, pp. 23550-23551, he stated that the final return in Ex Parte 166 was 5.7% and Ex Parte 168 was 4.03%. These rates, however, were not the final rates. In Ex Parte 166, 5.7% was the rate of return estimated on the basis of the increases applied for.

Mr. Frawley has given me the case. I will read the headnote:-

"By an agreement entered into between the City and the Company, dated January 25, 1924, confirmed by Federal Act 1924, c. 84, as a Schedule to the Act, provision was made for the fixing of tolls by the Board, either for an increase upon the application of the Company if the revenue to be derived from the operation of its transportation system within the City limits was considered insufficient to provide (a) the cost of operating the said part, (b) for maintenance in an efficient condition (c) for making proper provision for depreciation, renewal and replacement and (d) for a just and reasonable return to the Company of the capital investment in the said part; or for a decrease on the application of the City if the revenue to be derived from the operation of the said part appeared likely to be more than sufficient, in its opinion, to provide for the said four items, and that it considered the fares excessive (s. 9 (a)/and(c) of the agreement).

"The present application was made by the City for a reduction of fares.

"Section 2 of the 1924 Act, confirming the Agreement, provides that, upon application by either of the parties, the Board in altering any such fares 'shall be governed by the terms and conditions of the said agreement.'

"One of the items to be provided for out of revenue under the agreement is 'a just and reasonable return to the Company on the capital investment.'

In determining how the words, 'capital investment', as used in Section 9 of the agreement, should be arrived at, the City's submission was to take the original cost, new, of the property that is still used and in useful service, deduct from this the actual depreciation over the period and add to that the working capital. The Company's position, on the other hand, was that the rate base should be the actual cost, new, of the property still used and in useful service without any deduction for depreciation, with the working capital added.

"Deducting the depreciation reserve, or the amount of the actual depreciation, gets the value of the property at a particular time, not the capital investment. Nothing is said in the agreement about value, fair value or replacement value, such as frequently discussed in ordinary rate cases decisions.

"For these reasons, in the Board's opinion, 'capital investment' as used in Section 9 of the agreement means the

original cost new of all the used and useful property of the company which is on any given date being used or is useful in supplying the services which it sells, on that portion of its transportation system which comes under the agreement, including the amount of working capital employed by the company on the given date."

That is all I think I have to say on that point. I think that is clear and supports what I have said in my argument.

THE CHAIRMAN: None of what you have read out of the agreement there is "property used and useful"?

MR. SMITH: That is not in the agreement.

THE CHAIRMAN: That is in the Judgment.

MR. SMITH: That is in the Judgment, my lord. Perhaps I will read at page 148.

THE CHAIRMAN: Might I say that both parties agreed to that foundation, did they not?

MR. SMITH: They agreed, except that there was dispute as to the depreciation.

THE CHAIRMAN: Yes, I know, but "property used and useful."

MR. SMITH: Yes:-

"Under Section 9 of the Agreement, one of the items for which provision is to be made out of revenue is proper provision for depreciation, renewal and replacement of the company's transportation system. For this purpose the company has set up a depreciation reserve. It is in respect to how the depreciation reserve should be treated in fixing the amount of capital

investment, or rate base, on which the company is entitled to a just and reasonable return that the main difference of view arose in the previous cases. The term 'rate base' is in general use and may be defined as the amount on which the just and reasonable return to the company is calculated.

"In the 1928 case, 34 C.R.C. 316, the Board, in effect, held that 'capital investment' as used in the agreement means 'capital cost', and that the depreciation reserve has no bearing on the question, in fixing the rate base."

"In the 1933 case, 41 C.R.C. 86 at page 96, the then Chief Commissioner said:- 'For the reasons which I have given, I am forced to the conclusion that in determining the rate base so much of the depreciation reserve as has not been used for retirements or replacements should be subtracted from the capital cost of the company's property.'"

(Page 24538 follows)

"In the latter case, McLean, the then Assistant Chief Commissioner, who participated in the 1928 Judgment, said at page 115:

"I have no justification in point of fact which would justify me changing my opinion on the facts. At the same time, I bow to the decision of the Chief Commissioner on the question of law.'

"And the Assistant Chief Commissioner at page 116, concludes his judgment with the following words:

'In respect of the recommendations as to rate adjustments as set out in the judgment of the Chief Commissioner, I am in agreement.'

"On the hearing of the present application there was expressed a wide difference of opinion between the city and the company, as to the interpretation which should be given to 'capital investment' in Section 9 of the agreement, in relation to the fixing of the rate base."

Then the respective contentions are referred to. Then at page 150 the Chief Commissionr says:

"With great respect, I must say that I am unable to agree with this view. On this point I prefer the interpretation given to 'capital investment' in the decision of the Board in the 1928 Case, 34 C.R.C. 316, referred to above.

"It is our duty to construe the agreement as we find it. And the construction of a contract depends on the words in which the parties have seen fit to set out

their intentions."

I say that rule of construction is equally applicable to a statute. Then the Chief Commissioner goes on to say; at page 151:

"Webster's Dictionary defines 'investment'as' 'the investment of money or capital; the laying out of money in the purchase of some species of property, especially as a source of income or profit; the amount of money invested, or that in which money is invested.'

"I am unable to find anything in the agreement to adequately support the opinion that to arrive at the capital investment, or rate base, the depreciation reserve or the amount of the actual depreciation of the property to be deducted from the capital cost of the company's property. If you deduct depreciation, then you do not get the capital investment, but you get the value of it. The agreement does not say anything about value, fair value, or replacement value such as one frequently finds discussed in ordinary rate cases decisions. But here the terms of the agreement must govern, and the words used are 'capital investment'."

I was referring to some minor errors which I suggested that Mr. Sinclair made in referring to the rate of return in two of the recent American cases. In Ex Parte 166, 5.7% was the rate of return estimated on the basis of the increases applied for, which is shown at 270 I.C.C. 403 at page 437.

The petitioners' proposals for increases were not, however, allowed as a 30% increase was authorized

within eastern territory, although 41% was applied for; 25% was allowed in southern territory, although 31% was applied for, and an increase varying from 20 to 25% within western territory was allowed, although 31% was applied for.

Similarly, with respect to Ex Parte 168, as I mention in my argument in Volume 125, page 22544, in 276 I.C.C. 9, at page 41, it is pointed out that if the rates sought in the petition were granted, the average rate of return on all United States railways would be 4.03%, but that the rates sought in the petition were not granted but were reduced materially. The standard increase in the proposals of the petitions was for a 13% increase, while the increases granted ranged from 9 to 10 per cent. (Pages 113-118).

It is rather difficult to understand what Mr. Sinclair means when he says that the rate of return onthe investment of the Canadian Pacific Railway should be high because it is high in other industries where there is comparable risk. I find difficulty in locating industries where you have a comparable position.

Mr. Sinclair went to the length of contending that under the proposed amendment it would not be permissible for the Board to pass on what they thought the economy could stand. Volume 131, page 23559.

THE CHAIRMAN: Pardon me, what did you say there, "would not be permissible"?

MR. SMITH: That it would not be permissible for the Board to pass upon what they thought the economy could stand.

MR. SINCLAIR: What page is that?

MR. SMITH: Page 23559, Volume 131.

THE CHAIRMAN: That the economy of the country

would stand.

MR. SMITH: Yes, could stand.

THE CHAIRMAN: In theway of freight rates?

MR. SMITH: Yes. When asked by Commissioner Angus, in Volume 132,page 32586, as to whether the words "just and reasonable" imported some idea as to what is economically expedient and as to what the economy can stand, Mr. Sinclair frankly answered that the economic effect of freight rates should have no place in the definition of what are just and reasonable rates under the statute.

It is obvious, therefore, that what the Canadian Pacific Railway Company are asking for is an amendment which would reduce the function of the Board to that of mere computers. In Reduced Rates (1922) 68 I.C.C. 676, at page 731, it was said --

THE CHAIRMAN: What page is that again?

MR. SMITH: Page 676, at page 731, my lord. There it was said:

> "Our function under the law is not that of mere computers and cannot thus be atrophied."

An amendment which would so atrophy the function of the Board is, in my opinion, not one worthy of consideration.

THE CHAIRMAN: Were they talking about a similar proposition.

MR. SMITH: The only question they could take into consideration was the question of whether the economy of the country and whether the effect of rates on the revenues of the railroads in other matters could be taken into consideration. In all of the reports of the Interstate Commerce Commission, in almost every case, you will find a discussion of the effect on the economy of the country. Mr. MacPherson has characterized the

proposals of the Canadian Pacific Railway in graphic language on which I do not intend to improve.

THE CHAIRMAN: Did you say "approve" or "improve"?

MR. SMITH: Improve. Dr. Angus, in Volume 132, page 23570, suggested to Mr. Sinclair that he wanted the rate of return to be such that it would keep his stock at par even if there were no outside income, and Mr. Sinclair agreed that such was the case.

Dr. Angus pointed out in Volume 132, pages 23571-23572, that if an equitable rate of return is the return which will bring the stock of the Canadian Pacific Railway to par, he could not see that it matters what the investment was valued at or that the whole calculation matters in the least. In my respectful submission, Mr. Sinclair's argument leads to no other result.

One may respectfully agree with the suggestion of Dr. Innis that Mr. Sinclair is introducing rigidity in terms of the position of the Canadian Pacific which may be of considerable disturbance to the economy of the country. Volume 132, page 23583.)

That is all I have to say on the question of rate of return and rate base. I now propose to deal with some submissions which were made by my friend Mr. Spence. My friend Mr. Spence, in the course of his argument, in Volume 13, page 23399, made the rather surprising submission that the Duncan Commission as well as Parliament made a very serious error in accepting 250 miles as being the difference in mileage between the Intercolonial mileage and the short line mileage. In other words, it was Mr. Spence's submission when the Act was passed, based as it was on a difference of 250 miles, it gave the Maritime Provinces a greater advantage

than it was really intended to give them. He further contended that even if there had been some slight variation or change in conditions since the Act had been passed, the Maritimes still have that extra gratuitous benefit that would take considerable change in circumstances to overbalance.

In paragraph 8, page 21, of the Duncan Report, it was found that strategic considerations determined the actual course of the Intercolonial Railway, making it many miles -- estimated by Sir Sandford Fleming as 250 miles -- longer than was necessary if the only consideration had been "to connect the cities of the Maritime Provinces with those of the St. Lawrence".

(Page 24545 follows)

In the preamble to the Maritime Freight Rates Act as originally enacted, Chapter 44 of the Statutes of Canada, 1927 (17-18 Geo. V.), it was recited that the Royal Commission on Maritime Claims, by its Report, had advised that a balanced study of the events and pronouncements prior to Confederation and at its consummation had, in its opinion, confirmed the representations submitted to the Commission on behalf of the Maritime Provinces, that, among other things, strategic considerations determined a longer route than was actually necessary for the Intercolonial Railway and that it was expedient that effect should be given to such recommendations.

A somewhat similar statement is found in Appendix I to the Report of the Duff Commission at page 77, which is quoted on page 6 of the Submission of the Government of the Province of Nova Scotia.

Mr. Matheson has supplied the Commission and Counsel with photostatic copies of the Exhibit which was filed with the Duncan Commission, being an extract from "A History of the Intercolonial Railway" written by Sir Sandford Fleming, Chief Engineer in charge of Construction, and published by the Dominion Government 1876. Attached thereto are two maps, one showing the route of the Intercolonial Railway prepared by Sir Sandford Fleming, Engineer in charge, and the other showing the direct railway route from the inland to the Maritime Provinces.

I propose, with your permission, that page 77 of the extreact be read into the record.

"EXTRACT FROM 'A HISTORY OF THE INTERCOLONIAL RAILWAY' WRITTEN BY SIR SANDFORD FLEMING, CHIEF ENGINEER IN CHARGE OF CONSTRUCTION, AND PUBLISHED BY THE DOMINION GOVERNMENT 1876.

"Chapter 6, page 77.

"The location of the line being necessarily confined to British territory, it was forced to make a considerable detour, to avoid entering the State of Maine. Had no national considerations presented themselves, or had the boundary been laid down according to the treaty of 1783, or even in accordance with the settlement proposed, and, to some extent, pressed by the United States some years prior to the Ashburton Treaty, there would have been no difficulty in securing a direct, eligible route.

"The Railway would, in this case, in all probability, have followed the general course of the route surveyed by Captain Yule, in 1857, for the St. Andrews and Quebec Railway, as far as the neighbourhood of the River St. John, but with such modifications and improvements as further surveys might have suggested. Owing to certain political influences Captain Yule was bound by his instructions to pass to the North of Mars Hill. Thus his line was deflected out of the direct course to the seaboard; and it is highly probable that untrammelled he would have followed a shorter route. It is quite evident, from an inspection of the map, and from the natural features of the country, that lines of railway might have projected, so as to bring Montreal within 380 miles of St. Andrews, 415 miles of Saint John, and 650 miles of Halifax; and the distance from Quebec to St. Andrews need not have exceeded 250 miles,

67 miles less than to Portland. Fredericton, the seat of local government, would have been on the main line to Halifax, and distant from Montreal about 370 miles, and these lines, moreover, would have been wholly within the limits of the Dominion had the International boundary been traced according to the true spirit and intent of the Treaty of 1783.

"The distance between Montreal and Halifax would thus have been lessened nearly 200 miles. St. Andrews would have taken the place of Portland as the winter terminus of the Grand Trunk Railway, and would have commanded, together with St. John, a traffic now cut off from both places, and centered at a foreign port.

"The direct route would have brought the Springhill coal fields of Nova Scotia 200 miles nearer to Montreal than by the present line of the Intercolonial, and would have rendered it possible to transport coal by rail at a comparatively moderate cost.

"If, under such circumstances, an Intercolonial Railway line to connect the cities of the Maritime Provinces with those of the St. Lawrence had been constructed, the building of 250 miles of railway representing an expenditure of $10,000,000 would have been unnecessary. Great as this saving is, the economy in working it and in maintenance would have been important. The direct line would also have attracted certain branches of traffic which by the longer route must be carried at a loss or repelled. These considerations render the difference in favour of the direct line incalculable, and cause the more regret that the treaty made by Lord Ashburton, which ceded territory equal in size to two of

the smaller States of the Union, rendered such a direct line through British territory forever impossible. Although it is too late to rectify this almost fatal error, it is important in a history of the Intercolonial Railway to recount all the steps by which so costly a consequence has been forced on the Dominion."

It is amazing that the accuracy of the surveys and estimates of an engineer of the eminence and qualifications of Sir Sandford Fleming should be challenged at this late date. At least the former President of the Canadian National Railways, who was an engineer of high standing, did not dissent from Sir Sandford Fleming's railway estimate. (See Duncan Report, Paragraph 11, p. 22.)

Mr. Spence, as I have mentioned, contended that the Duncan Commission accepted 250 miles as being the difference between the Intercolonial mileage and the short line mileage. By his reference to "short line mileage" Mr. Spence obviously means the mileage on the so-called "short line" constructed by the Canadian Pacific Railway Company in or about 1890, extending from Montreal to Saint John.

Sir Sandford Fleming's book was written many years before the so-called "short line" was constructed. In these circumstances, it is rather difficult to understand Mr. Spence's argument.

I am content to rest my case on the railway estimates of Sir Sandford Fleming which, with respect, I really prefer to those of Mr. Spence.

I suggest that the Duncan Commission, the Duff Commission and Parliament did not err in this connection. I am ready to go along with Sir Andrew Duncan, Sir Lyman

Duff and Sir Sandford Fleming. I thinkI am in good company. I come now to the final matter which I intend to discuss.

PROPOSED AMENDMENTS TO MARITIME FREIGHT RATES ACT

Mr. Spence, in his argument, dealt at some length with the proposed amendments to Section 8 of the Maritime Freight Rates Act.

At Volume 131, page 23412, he suggested that the Maritimes by the clause proposed to be added to subsection (1) of Section 8 of the Act were attempting to enlarge their preferences under the Act. He argued that the aim of the Maritimes seemed to be first, to force the Railways to meet competition in the Central Provinces by reducing their rates, then to try to derive an advantage from the fact that the Railways had done so.

Although questioned somewhat closely by members of the Commission, and at one time admitting that the word "force" was incorrect, he returned to his position by stating that Mr. Evans pointed out to him that perhaps he was right in using the word "force" after all.

Mr. Evans also suggested that under the clause proposed that if the railways reduced the rates thereunder, they could not raise them again even though the competition in the area outside the select territory had disappeared and the former rates there had been restored.

In my submission, the proposed amendment is not susceptible of such a construction.

In essence, the amendment is proposed for the purpose of empowering the Board to do what the Supreme Court in the so-called Potato Case, 46 C.R.C. 161, found they could not do under Section 8, namely, adjust or vary

tolls for the purpose of maintaining the statutory advantages in rates. The Court held that the power of the Board was limited to the cancellation of the tolls.

The Railways have, in certain instances, granted corresponding reductions but what we are asking for is that the Board have power conferred upon them to compel the railways to grant the reduction in the event of their wrongful refusal to do so.

I am rather surprised at the statement made by Mr. Spence at page 23425, Volume 131, that while between railways in the United States there are market competitive rates put in, that is not the case in Canada. He qualified his submission to the extent of stating that if you have one exclusive Canadian National point and another exclusive Canadian Pacific point running into a common market, he thought theoretically it was possible to put in market competitive rates, but that it is not done.

I suggest that I need only refer the Commission to the case of The Maritime Freight Rates Act (Interpretation) 1933, 41 C.R.C. 56, in which the Supreme Court of Canada held that the Board's power to certify normal tolls was not exhausted with their first certification and accordingly that tariffs filed by companies other than the Canadian National Railways to meet new industrial or traffic conditions conferred on the Board authority to approve such tariff tolls and that such companies had therefore the right to file tariffs and obtain reimbursement from the Government in respect of reduced rates.

This was a case stated for the opinion of the Supreme Court by Order of the Board of Railway Commissioners under the authority of Section 43 of the Railway Act and as appears on page 61, there were attached to the Stated Case, as a supplement, copies of the Board's

Orders and Tariffs setting out examples of rates published on a basis lower than the rates originally approved under the Act to place an industry on the originating line and on a competitive line on a similar basis with industries located on the Canadian National Railways, and at page 69 of the Judgment of the Court, which was delivered by Sir Lyman Duff, C.J.C., there are examples given in paragraph 10 . in the Case. Among these examples is that contained in Heading 2, which . reads as follows:

> "Heading 2. These are cases of what, it appears, is sometimes called 'marked competition'. That is to say, the railway finds it necessary to reduce its rates in order to put shippers on its line in a position to compete with shippers on another line (in this case the C.N.R.) in common markets. This expansion of business would not have been possible if the further reductions had not been made."

It is evident that at least in 1933, therefore, the Railways were putting in rates to meet market competition on the line of their competitors and I should certainly be astonished if such a practice ~~had~~ has been discontinued.

My lord, I think that is all I have to say except that Mr. Matheson asked me, inx view of the positionof the Canadian Pacific Railway with respect to the amendment suggested by Mr. Matheson by way of a new subsection (4) to Section 9 of the Maritime Freight Rates Act, to request that the proposed amendment be not filed for approval.

THE CHAIRMAN: Be withdrawn.

MR. SMITH: Withdrawn.

MR. COVERT: Which one is that?

THE CHAIRMAN: It is the proposed amendment to what section?

MR. SMITH: It is subsection (4) of Section 9, the new subsection (4) of Section 9.

THE CHAIRMAN: To add a new subsection (4).

MR. SMITH: That that be withdrawn. Thank you very much indeed for your patience in listening to my argument. I thank you very much.

(Page 24553 follows)

THE CHAIRMAN: Mr. Barry?

MR COVERT: Yes.

THE CHAIRMAN: Very well, Mr. Barry.

ARGUMENT IN REPLY BY MR. J. PAUL BARRY

MR BARRY: Mr. Chairman and members:

These are the last words, but not the famous last words.

I have read with little interest and no surprise the general attacks made by the Canadian Pacific on not one but nearly all of the proposals put forward by the provinces, and not only those put forward by the provinces but also the proposal for the capital revision of the C.N.R. I suppose that the philosophy of the Canadian Pacific is typical reactionary doctrine, in that with them the paramount item is the interest of the Canadian Pacific, its bondholders and stockholders, and dividends. I suggest that their motto before this Commission should be placed on the frontispiece of their brief: "Dividends above all". The unfortunate aspect of that attitude is that it takes little or no account of the many millions of people represented by provincial counsel, and is based solely on the interest of a few thousand investors. I am satisfied, however, that this Commission is much more concerned with the interests of the people generally than with C.P.R. investors alone. I do not suggest that no consideration should be given to those investors, and I do not think that any provincial counsel has suggested that, but I do not see why the shippers and consumers of this country, the freight payers, should bear the burden of raising C.P.R. stock to 25 to enable capital gains to be made by people who purchased that stock, at least in part, as risk investment, by people who knew the

situation or who did not endeavour to ascertain it. These investors took a risk. Should they lose, it is unfortunate, but that is no reason why their return should be guaranteed now, when it was not assured at the time they bought the stock.

It is appreciated that this Commission was certainly not appointed, at least primarily, to improve the financial position of the Canadian Pacific Railway by increasing the freight rates another 20 to 24 per cent, as is indicated would be necessary if the rate base and rate of return method were adopted. Mr. Frawley mentioned this morning that the proposed changes in salary schedules and wage rates would increase the freight rates by another 5 per cent, but since discusiing it with him it should be expressed in terms of 8 to 10 per cent on the railway's own commitment if income tax is included, which would mean . a further increase of approximately 32 per cent. The people who requested the appointment of this Commission rather felt that some change might be made whereby the incidence of rates might be distributed more equitably. It was not conceived that a 20 to 24 per cent increase would result and that the Canadian Pacific would be placed above risk or reproach as a result.

Mr. Sinclair feels that a rate base and rate of return is the answer to all C.P.R. problems or to most of them at least, and we of the provinces disagree very definitely. We say that the economy of Canada, partly disrupted as it is, would become more disrupted if such a method were adopted. If revenues went down because of high freight rates, and more revenue became necessary for any rate of return, then another rate increase in addition to that which I have mentioned would become necessary, and it would, as the facts indicated, fall on certain provinces

only. The economy would then be really distorted in the interest of one private organization, the C.P.R.

The Commission will note that the counsel for the Canadian Pacific have attacked all proposed amendments to the Railway Act, stating that policy should not be included in a statute. But, on the other hand, they want policy included as to rate base and rate of return for their benefit. They blow hot and cold on the same section of the Railway Act.

The Canadian Pacific also oppose any extension of the Maritime Freight Rates Act. Why? They are not asked to give up anything themselves. They will receive compensation for any such concession. The argument that has been made by Mr. Evans, that subsidies are continually extended, is not borne out by the fact that in twenty-three years the subsidy payable under the Maritime Freight Rates Act was not changed, nor did it result in any nationalization of the Canadian Pacific Railway. I submit respectfully that the Canadian Pacific fears in that respect are groundless.

THE CHAIRMAN: Fears of what?

MR BARRY: Of the effect of subsidies upon their existence.

THE CHAIRMAN: Are you now talking only of your suggested increase in this particular subsidy or of subsidies in general?

MR BARRY: I am speaking with respect to the Maritime Freight Rates Act and New Brunswick, sir, not addressing myself to the other arguments of other provinces. We are in an economy which consists of subsidies in tariffs, customs tariffs and otherwise, and unless we abandon those, and perhaps the Canadian Pacific would be willing that the tariff subsidy that protects the Upper

Canadian manufacturer would be abolished, then it will be necessary to assist other people who are adversely affected by that subsidy system.

With respect to horizontal increases, Mr. Evans stated, at page 23301, volume 130 -- and the same attitude is expressed in their brief -- that the situation in the United States is quite different than it is in Canada. Mr. Evans stated, at page 23302:

> "It is in the interest of the U.S. roads to promote the business of producers on their line as compared with the producers on other lines at the common market."

They have every incentive to apply the type of increases suggested by the provinces in this proceeding.

What then is the inference from that statement? The only inference is, "We, the C.P.R., do not need to care about these people on our line. We will get their business anyway."

That is the attitude about which we are complaining. That is why we are here endeavouring to amend the statute to require that the Canadian Pacific be made to take those factors into account. We at least have made suggestions designed to help. What has the Canadian Pacific suggested? All they say is, "Alberta is wrong, British Columbia is wrong, the Maritimes offer a mass of ridiculous legislation, Manitoba is absurd, P.E.I. is wrong, the C.N.R. is wrong, and we, the Canadian Pacific, are the only people who know what we are doing, and in some things we do not need to take certain factors into account, no matter whom it hurts." If this Commission adopted the attitude of the Canadian Pacific as expressed consistently throughout the hearings, it would have to recommend to the Dominion Government that everything is in order, the

provinces are all wrong and their grievances are imaginary, the Canadian National Railway is wrong, and the Canadian Pacific is the only one which is right and knows exactly what it is doing, and its shareholders deserve more consideration, and the freight payers are not paying enough freight, abolish appeals to the Privy Council, control trucks, and the Canadian Pacific will get more revenue and that would solve the problem.

MR SINCLAIR: Harangue!

MR BARRY: To go back to the beginning of the meetings of this Commission, the members will recall that all agreed that it was not to be conducted in a litigious atmosphere. I suggest that it has become very much litigious. Instead of the railways endeavouring, with their knowledge of the problems, to assist in solving the problem, except for Mr. Fairweather of the C.N.R. the other railway traffic witnesses state that all is in order. The Canadian Pacific witnesses seem to have only one object in view, namely, to oppose anything anybody else suggests.

I rewpectfully suggest that the Canadian Pacific has shown a decided lack of co-operation in bringing forth any suggestion designed to ease the burden of rates on our economy, when they should be in a very good position to do so. Their efforts should have been considerably more devoted to solving our common problems rather than ridiculing everybody else's suggestions as to how the matter might be alleviated.

Not one provincial counsel has stated that the financial interest of the Canadian Pacific Railway should not be considered. But the Canadian Pacific has consistently refused to give any consideration to long haul shippers; to quote them in their own argument, "They don't need to care about them." They will care of necessity when those

long haul shippers are required to move into the Central Provinces where they can ship by truck.

It is respectfully submitted, Mr. Chairman, that instead of endeavouring to help the Commission by constructive measures to find some solution to the problems which caused the appointment of this Commission, we have listened to complete destruction or attempted destruction of any suggestion made by any of the provinces.

Now I feel, Mr. Chairman, it is incumbent on myself to reply to two telegrams which were sent to this Commission from New Brunswick, which are copied into the record in volume 132. The first one is signed by Mr. J. W. Stewart, at page 23623, Maritime Division, Canadian Manufacturers Association, in which he states that a reference to volume 22, page 4179, stating that the proposal concerning the extension of the Maritime Freight Rates Act to inward movements, was not discussed with his Association.

Now, in connection with that, Mr. Chairman, on March 22, 1949 -- and I am somewhat at a disadvantage, since I do not know the reasons offered by Mr. Stewart or by the manufacturers who also sent a telegram -- we met in the Admiral Beatty Hotel in Saint John with a group of manufacturers---

THE CHAIRMAN: Pardon me. You say "we met" -- who met?

MR BARRY: Three members of the New Brunswick committee which prepared the submission -- Professor Love, Mr. Moore and myself -- on March 22, 1949, and at that meeting there were approximately eleven manufacturers. The telegram is at page 23765, and it is signed by T. S. Simms & Company Limited -- Mr. Simms was one of the persons present; Enterprise Foundry -- there was nobody from there; Enamel and Heating -- I did discuss this with one of the

representatives of Enamel and Heating, but not at that meeting; Wilson Boxes Limited; Moosehead Breweries---

THE CHAIRMAN: Which telegram are you referring to

MR BARRY: This is at page 26735, from the Manufacturers; this is the second telegram.

The one member of the New Brunswick Committee advised me---

THE CHAIRMAN: The first telegram simply says that no such question was discussed on a certain occasion.

MR BARRY: Well, the telegram says, sir:

" . . . reference was made to this Association STOP We wish to have it placed on record that this reference was not correct STOP The New Brunswick proposal has never been placed before, nor discussed at, any meeting of the New Brunswick branch."

Now, I do not know, sir, what this was a meeting of, but we were advised that there was a meeting of the manufacturers in Saint John on that date, and we attended there. Now, the secretary of the meeting---

THE CHAIRMAN: Well, the man who sent that telegram attended?

MR BARRY: No; his assistant did; a Mr. Swetnam, who is assistant secretary to Mr. Stewart, was there at the meeting.

THE CHAIRMAN: Did they reach any decision?

MR BARRY: At that meeting we proposed to them what we intended to recommend to this Commission.

THE CHAIRMAN: And what happened?

MR BARRY: There was no opposition, and in fact two at least of the persons who signed this telegram expressed agreement with it. That was on March 22, 1949.

THE CHAIRMAN: Well, that finishes that episode, then, that first telegram, doesn't it?

MR BARRY: That is right, sir.

THE CHAIRMAN: Then you go on to the second telegram, which is signed by a number of manufacturers?

MR BARRY: That is right, sir.

THE CHAIRMAN: Now, the effect of that one is to say that they oppose what you propose?

MR BARRY: That is right, sir -- some of the same ones who were at the meeting; in fact one of the ones who supported it at the meeting; in fact the first signer was one who approved of it.

THE CHAIRMAN: Well, perhaps they have changed their minds.

MR BARRY: If I knew the reasons, Mr. Chairman, I could answer it. Mr. Simms of T. S. Simms & Company Limited was at the meeting. Mr. Simms imports his raw material to a certain extent from the southern United States. He sells his articles on a national price, on a national line. The Moosehead Breweries Limited, I do not know how they would be affected by it, because they---

THE CHAIRMAN: In any case, you have this from the New Brunswick manufacturers, who do not wish to have the benefits of that Act extended to traffic---

MR BARRY: I suggest, Mr. Chairman---

THE CHAIRMAN: Pardon me a moment. That is the case, isn't it?

MR BARRY: I suggest that---

THE CHAIRMAN: I just want to know whether that causes you to change your attitude?

MR BARRY: No, sir, it does not.

THE CHAIRMAN: The Government of New Brunswick remains unshaken?

MR BARRY: Absolutely. I perhaps had better adhere to my notes, since it may be a controversial issue.

On March 22, 1949, in the Admiral Beatty Hotel in Saint John, three members of the New Brunswick committee which prepared the brief to present to this Commission met with a group of persons who were manufacturers, and the secretary of the meeting, or at least a young man in attendance, was Mr. Swetnam, who was assistant to Mr. Stewart, so I understand, who was Secretary of the Maritime Branch of the Canadian Manufacturers Association. Whether it was a Canadian Manufacturers Association meeting or an ordinary manufacturers' meeting I do not know. No matter what you call it, we met there and discussed New Brunswick's proposals and no opposition was found.

(Page 24561 follows)

In fact several of the people who now sign the second telegram to this Commission approved the extension.

THE CHAIRMAN: Would you say then that they lost on demurrer?

MR. BARRY: I suggest perhaps it should not be taken too seriously, after 14 months and after all the attendant publicity at the time of the presentation of this Brief of New Brunswick to your Commission in July 1949, whereupon nobody appeared to protest nor offered any evidence, and suddenly now in May 1950 this should appear here without my having an opportunity - -

THE CHAIRMAN: I think the main thing is what you have already told us, that the New Brunswick Government maintains its attitude.

MR. BARRY: That is right, sir. In May 1950, 14 months after the matter was first proposed, opposition develops. Why? There is only one person of whom I know who was opposed generally to it, and that was Mr. Matheson, with whom we had some discussion, and it was as a result of his opinion that we had a meeting with the manufacturers because of his idea that it might be opposed by them. It was because of the discussion with Mr. Matheson that we went to the manufacturers and discussed it as stated, and no opposition was forthcoming. Now, after the argument presented here by New Brunswick a few weeks ago at which I stated I did not know of any opposition, suddenly this wire comes. The Government of New Brunswick is content to rely on the conversations which we held in March 1949. First, we do not believe that the manufacturers will be injured (by looking at the list of them that appears quite obvious). Secondly, the New Brunswick Government, while not by any means minimizing the importance of our manufacturers, must

also remember that the consumers of New Brunswick deserve consideration with regard to all of those items which we must import. It is the considered policy of the Government of New Brunswick that this proposed extension will not injure our manufacturers and will materially assist our ordinary people, labourers, farmers and other primary producers.

I do not know the cause of the telegram coming at this particular time, as no person appeared either here or in New Brunswick to be subject to cross-examination on the reasons for it. It appears that it was after it was stated before the Commission by myself that while I could not state that there was not any opposition, none had been registered, that this telegram arrived. The only reason given in the telegram was that it is contrary to the Duncan Commission. After a careful perusal of that report, I can find nothing in it which runs counter to our proposal.

Apparently these manufacturers feel that the 20% reduction is to be used as a tariff against upper Canadian manufacturers. I do not think that such was ever the intention of the report of the Duncan Commission. If the 250 mile argument applies one way, why should it not equally apply the other way to aid consumers?

The report found that the changes which had taken place since 1912 placed a burden upon the merchandise and industry of the Maritimes which was out of proportion to other parts of Canada. This, of course, also placed the burden on the consumers. The same 250 miles which resulted in the concessions on outward movements, also raises costs on inward movements.

I suggest that the reason it was not recommended by the Duncan Commission was that it was not asked for at the time.

We strongly urge that such concession be granted and that due to the prevalence of competitive rates in central Canada and the effect of them upon our position, that the 20% become 30%. The Government of New Brunswick, after giving due consideration to the cost of living of the consuming public as well as the problems of our manufacturers, recommends that your Commission exceed to our request.

In the absence of evidence to the contrary and upon a consideration of the fact that such a length of time has elapsed without opposition, and in the absence of any other reasons, I can only say on my own responsibility that this telegram was sent without due consideration by the signers and apparently upon a request of somebody concerned. Unless it is positively shown by some person that the inward proposal would hurt our industry, and such has not been shown, we must assume that it will not be adversely affected.

If our suggestions are "officious meddling" as Mr. Spence said, I suppose that this Commission and the Dominion Government are also guilty of "officious meddling", so we are in very fine company.

The Government of New Brunswick is equally interested in the consuming public and the manufacturers and while we appreciate the attitude of the Boards of Trade, composed of industrialists and business men, we must also speak for those people who are unable to speak for themselves in order to ease the burden on them. Thank you sir.

COMMISSIONER INNIS: What would the date of the Manufacturer's Association Annual Meeting?

MR. BARRY: I don't know, sir. March 22 is the day that we met it in St. John.

COMMISSIONER INNIS: I was wondering as to whether it was held before these telegrams arrived.

MR. BARRY: I don't think there was any manufacturer's meeting at the time of these telegrams.

COMMISSIONER INNIS: They had one just recently. I don't know whether it was before the telegrams or - -

MR. BARRRY: I don't know, sir.

MR. COVERT: My lord and members of the Commission, this closes 33 days of regional hearings and 83 days of evidence presented in Ottawa, and 21 days of argument.

THE CHAIRMAN: How many days in all then?

MR. COVERT: One hundred and thirty-seven. I thought that it would not be right that the hearings and argument should end without extending to the counsel who had been engaged in this matter, the thanks of the Commission and the thanks of Mr. Desmarais and myself for the assistance that they have given us throughout. They have been very co-operative through the whole piece, and I think it is only fair to say it has been a pleasure to have known them and to have met with them and to have dealt with them.

Now, I did want to say that this Commission had perhaps a little different method to that of other Commissions, and I felt it should be observed at this time that there was a very sound reason for it in view of the nature of the problem involved and the many technical matters which are involved, and that this was perhaps the best way to test the evidence of the various opinions that had been expressed to this Commission, and

in a real endeavor to get at the facts of the problem and the cure if there be one.

Now, as I say, we have gone from one end of the Dominion to the other. I think everyone has had an opportunity to present any grievances that there may be. I think we have had the advantage of listening to argument of counsel who have been engaged in rate matters for a good many years and who have been engaged in dealing with the railway problem for many more years. I think perhaps we have been very fortunate that it has given everybody an opportunity to present their views and the answers to their problems as well as the problems themselves.

Now, it is now the task of the Commission to work out the answers, and I know that everyone here, all the counsel involved representing the provinces and representing the railways, will wish that the solutions arrived at will be of assistance in solving the transportation problems of this country.

I wanted also, Mr. Chairman, to thank Mrs. Adamson and the excellent staff of reporters who have seen to it that the Transcript has been done every day and available to counsel the same day or that evening.

I also want to thank on behalf of, I think, the Commission, all persons and organizations who have presented Briefs to this Commission. I think it is perhaps remarkable that there has been really no unpleasantness throughout all the hearings, and that the views have been fairly presented as best the people thought they could.

In closing I would also like to thank your lordship and the members of the Commission on behalf of

Mr. Desmarais and myself and, I feel sure, on behalf of all counsel, for the very patient and understanding way in which you have listened to us throughout. Thank you very much.

MR. MacPHERSON: Mr. Chairman, and gentlemen of the Commission. A request has come to me in the past couple of minutes that I prize very highly, one that I think augurs well for the success of this Commission in its deliberations. When Mr. Covert started to speak, it would be natural that someone would say something on behalf of the provinces, and to my surprise, I have been asked to speak not only for the provinces but for the railways as well.

(Page 24567 follows)

When Mr. Sinclair and Mr. Spence and Mr. O'Donnell and Mr. Friel asked that we speak for all, it indicates how in the final act there is a great desire on the part of everyone to co-operate, particularly in expressing to the Commission our appreciation of the patience and consideration they have shown to counsel at all times.

We quite realize that at times we have transgressed, we quite realize that at times we have probably been more lengthy in our presentation and our examination and cross-examination that we should have been, but the Commission has been most considerate and most patient at all times.

I should also like to express, with Mr. Covert, our appreciation to the reporters and to all others who have contributed to our being able in some measure as counsel to make a contribution to the Commission.

The Commission has been long, it has lasted for exactly one year, and the people of Canada -- the people of the seven provinces certainly, and I think the people of all Canada, even of the two provinces that have not been represented by counsel -- hope in the interests of the country that much will come from the Commission.

Again I wish to express to the Commission on behalf of all counsel, and again I say, it augurs well for what this Commission is going to succeed in doing in the interests of the country, that railways and provinces, after all their scrapping and fighting of the past twelve months, unite on this occasion in what I am saying.

THE CHAIRMAN: Well, Mr. Covert, I have consulted my colleagues, and we are unanimous in approving of the very fine sentiments which you have expressed toward counsel, whose able assistance we appreciate in the same

manner as you do. We started on this investigation, in so far at least as I am concerned, almost utterly ignorant of the matters that were to be investigated, and it is only by the very earnest and very deep assistance given to us by counsel for the railways, for the provinces and for all the other interests concerned, that we have succeeded in informing ourselves as to what the situation in the country concerning the problems before us really is. We undertook a very long pilgrimage, as you said, from one end of the country to the other, and we are very happy to have done so, because nothing could be better calculated to enable us to arrive at a comprehensive view of the situation and the incidence which the various problems have on the various regions of the country. We owe a great deal to counsel; we have that in mind; we recognized that before, and we are very happy now that you have given us the occasion to say so.

We also quite appreciate what we owe to the reporting staff, to which you have referred, and the very great efficiency with which they have conducted their work under the guidance of Mrs. Adamson; and we are thankful, too, to other persons and organizations not represented before us by counsel but who have contributed to the solution of our problems by furnishing briefs and by putting some other evidence, some expressions of opinion, before us.

In answer to Mr. MacPherson, I think perhaps there could not be a more happy closing to an investigation of this kind than to see that he is empowered to speak for all counsel, and that the time has come when "a little child has led them." That is a solution that has been looked forward to for many centuries. We thank you, Mr. MacPherson, for what you have been so kind as to say concerning ourselves.

The first act in the drama is now concluded, and

after a very short intermission the second and final part of our work will have to be gotten under way and to be brought to a conclusion in the fastest possible time, consistent with thoroughness, of course; it would not be conducive to public feeling, I am sure, or to a proper solution of our problems, if we did not take the necessary time -- not more than the necessary time, however -- to work out the different questions before us, in so far as finality can exist in human affairs, to a final solution. We thank you all once more, and we hope that we shall all meet again.

I had told my colleagues I was going to do this, and I was about to omit it. That is to say, we have realized right along the very efficient reporting of our proceedings which has been given to the press of this country. We have not, of course, been able to read everything, but we have seen enough of what has been published from time to time to know that the reporting has been very efficient, and I might say uninterrupted, because we know that wherever we have gone, and here particularly in our sittings in Ottawa, we have had present representatives of the press who have followed with very keen interest all that has taken place before us. That is all to the good, too; it was a very important part of the whole proceedings that the public should be kept informed, in a summary in concise style, of what has been going on from day to day. We are very truly grateful for that too.

The hearings of the Commission closed at 1:18 p.m.
